

2019 SENATE AGRICULTURE

SB 2269

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
2/7/2019
JOB # 32694

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota Century Code, relating to cottage food production and sale; and to amend and reenact sections 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

Attachments # 1 - 13

Chairman Luick: Called the committee to order on SB 2269. Roll call was taken, all members were present.

Senator Jerry Klein, District 14: Introduction and history of the bill. Conformity and consistency are the main issues.

(7:52) Julie Wagendorf, Food and Lodging Director, ND Department of Health: Testified in support of SB 2269 and provided Attachment #1.

(14:07) Senator Klein: Cottage food producer may not sell in any food establishment or store, because they require a license to operate. So the grocery store or restaurant cannot buy from a cottage food person because of their license?

Julie Wagendorf: Correct.

Senator Klein: Are there any federal guidelines here? Like as a state we have to meet or exceed the federal guidelines, does that apply to food?

Julie Wagendorf: Yes, it is very similar to how meat is regulated by the United States Department of Agriculture Food Safety and Inspection Service. Any food intended for whole sale is regulated by the FDA, that involves interstate commerce. Any laws we enact for ND, only applies to the state. Any products shipped over state lines are now under FDA.

Senator Myrdal: You mentioned in your addition, the acidified and fermented fruits and vegetables, I assume that is canned goods? (Correct.) You also mention a PH equilibrium of less than 4.6. Can you explain to me what would not fit under that?

Julie Wagendorf: On page 2, line 14, #11 it defines what high acid and acidified foods are. That just means they are naturally high in acid or have been acidified by adding acid or a culture to reduce that PH to 4.6 or below. That is how categorized as far as low acid, high acid, or acidified. We would be allowing anything with a high acid, like fruit. Acidified you can do fruits or vegetables. That acid is there to stop the bacteria that allows botulism to grow. 4.6 or lower is too acidic for the botulism, it is a preventative measure. Anything low in acid, like a canned vegetable, now we don't have that control measure in place. There are spores that can withstand heat treatment. The only way to get a safe product is cooking it under a pressure canner.

Senator Myrdal: What is botulism? What are the ramifications?

Julie Wagendorf: It is a rare disease. When it does occur, it is an intoxication, so when you ingest that food, you ingest the toxin. It usually started from the top down. So maybe dizziness or confusing, blurred vision, difficulty speaking or swallowing, in the end if it is fatal, your lungs and organs become paralyzed and you die. It is very rare, but we try to prevent it.

Senator Luick: Definitions seem straight forward here.

Julie Wagendorf: I would like to point out the definition on page 1, line 16, # 3 commercial consumption. We worked with LC on the language of "home consumption" which is how it is currently worded in law. That becomes difficult to define, so we changed that for consistency. Another definition under cottage food product, we added so the phrase does not include whole uncut fresh fruits and vegetables. The reason we added that, was clarifying that whole uncut fruits and veggies as raw produce are not covered under ND food laws. Therefore, they don't need to be a cottage food product, they are allowed already. Unless they meet the qualifications of the food safety modernization act, which is a federal law. ND doesn't have a law that regulates farm commodities as long as they are whole and unprocessed. Another definition is on page 2, line 8-9 are the definitions of food establishments and food requiring time and temperature control for safety. The definition of a food establishment depends on the type of food prepared there. Existing food laws that define these things is chapter 23-09 of the Century Code. It does not include an establishment that offers only prepackaged foods that are not time and temperature controlled for safety; doesn't include a produce stand that only offers whole uncut fresh fruits and veggies; doesn't include a private kitchen if only food that is not time and temperature controlled for safety; doesn't include kitchen in a home, like a small daycare. Section 2, page 3, line 4, #1 LC did some wording to be consistent. Local ordinances are preserved.

Chairman Luick: Do those subdivisions still have the availability to make it stricter than what state law is?

Julie Wagendorf: Not being a lawyer, my understanding of line 11, it says a state agency or political subdivision may not require license or regulation permitting certification or inspection. That is in there for the intent they cannot have local ordinances that are stricter. Continued to explain words that were stuck out or rephrased for clarity throughout bill. Explained changed formatting of the bill.

(30:41) Senator Myrdal: In 2014 that was a long discussion, if a person was doing these products in their home and I'm at a market and want to buy the, there were cleanliness concerns of the original cooking place. Can you explain to me why you removed that?

Julie Wagendorf: There isn't a standard in place, it is unregulated. If the health department would be asked to look into a complaint, there isn't any standard of comparison. If there is an illness and it results in an outbreak, the state health officer would be able to follow through and investigate that.

Senator Hogan: Do cottage food operators have any requirement for liability or is there no protection?

Julie Wagendorf: There is no requirement. Most probably look into it maybe. Continued explaining struck out language.

Chairman Luick: Does the internet marketing/selling come into play with federal laws? Also what about state lines with that?

Julie Wagendorf: I don't know that that is an issue. But if someone from out of state orders a product and they ship it out of state, it could be a potential problem.

Chairman Luick: My farm is 1 mile from SD and 3 ½ from MN. Our communities work well together between the 3 of us. We could have problems in situations like that. I was just curious.

Julie Wagendorf: Depends if you are selling and shipping something over state lines, or an event with on-site food preparation for immediate consumption. If you ship products outside of the state, you might run into problems with the FDA.

Chairman Luick: I can see this happening on all the borders, especially with close communities.

Julie Wagendorf: It's not allowed in federal law. Continued with explanation of the bill wording in Section 3.

(42:25) Chairman Luick: These craft breweries, wineries, etc., they need to be licensed?

Julie Wagendorf: They are licensed by the Attorney General, taxed by the tax department.

Senator Larsen: With eggs, in Scotland they don't refrigerate them, they just set on a shelf. What is the deal with that?

Julie Wagendorf: There are folks in the department of agriculture that might answer that better. As long as the membrane hasn't been compromised, the egg can be shelf stable. Food code looks at the environment that the eggs are in to have a potential for cross contamination of salmonella. As soon as you wipe off the membrane, the shell is porous, and can take in bacteria and needs to be refrigerated.

Chairman Luick: You're just talking about washing the eggs? (That was confirmed.)

Senator Klein: Talking about the PH levels, does the county agent have information for people to help with home canning?

Julie Wagendorf: There is. NDSU extension has several offices throughout the state. 25 of those offices can do PH testing for you. I believe they charge a small fee for that. They can provide guidance. We have a map on our website. Continued explaining the bill in Section 4, which deals with labeling.

(49:35) Senator Hogan: Does this labeling require full contact information?

Julie Wagendorf: There is no requirement for contact info, no ingredient listing, no allergen listing.

Senator Hogan: So no label about who actually made the product, just instructions?

Julie Wagendorf: If it is something that requires temperature control yes, but they don't have to do anything else. Continued explaining the bill in Section 5, dealing with inspection.

Senator Myrdal: Basically section 1-2 is clarity in language and uniformity across the state. Section 3 follows FDA regulations and definitions. Section 4 is labeling for consumer safety. Am I correct in that short summary? (That was confirmed.) Wyoming is the only state less strict than us? So we are second to the least regulations?

Julie Wagendorf: As far as I know, we are the least restrictive for unregulated cottage food products. There are states that regulate cottage foods, they require license, inspections, and testing. Compared to what else is not required in our law, we are the least restrict that I am aware of other than Wyoming.

Senator Klein: If I wanted to pick up 10 kuchen and drive them to MN, that would be on me then correct?

Julie Wagendorf: That is correct.

Senator Klein: Then the labeling issue, if I picked it up at your house, they don't need a label? It is primarily for out in public?

(54:02) Julie Wagendorf: Correct. If you're transporting, we recommend freezing.

Senator Myrdal: I received emails that deal with basketball games, sports events, church picnics, those are covered under a different section correct?

Julie Wagendorf: In law 23-09.2 is the food preparers education act. That covers community spirited events, bake sales, school functions, community dinners etc.

(58:02) Carel Two-Eagle, Bismarck, ND: Testified in support of SB 2269 with some amendments and provided Attachment #2.

Senator Larsen: Have you made yoghurt with your goat milk? (That was confirmed.) That's awesome, I am all about goat milk.

(1:01:55) LeAnn Harner, Oliver County resident: Testified in opposition to SB 2269 and provided Attachment #3.

(1:07:25) Chairman Luick: You are the provider, I am the restaurant owner, I want to buy apples from you. I could pick them up from your farm and use them in my restaurant?

LeAnn Harner: Most places you could, but a few local districts prohibited that unless I as the farmer has an inspection by the local health district. You could come to me and buy them, you could come to the farmer's market and buy them, but me as a provider cannot deliver them to you.

Senator Klein: But you like that line, because I as a former grocer could buy corn or watermelons because it is not a cottage food.

LeAnn Harner: I understand your confusion. The problem is, when you remove fresh, whole/cut fruits and vegetables from this line entirely, then you also remove the protection that no local health district can write rules on it. That is why on page 4 lines 4-6, it's important for they language to be kept in. Changing placement is fine, but we believe those need to be protected from local regulation.

Senator Klein: Every attempt has been made to do that. It isn't a cottage food, it isn't restricted. That was the consistency we talked about 2 years ago. By putting this year, even local health districts will understand this isn't something to just look at.

LeAnn Harner: We all understand what we're trying to do here. Let's keep going. Continued with her testimony and re-reading the bill.

(1:13:33) Chairman Luick: Number 4 is taken out completely, so the numbering is correct.

Senator Myrdal: You mentioned advertising on the internet. The transaction still has to be person to person?

LeAnn Harner: That is correct. MN farmers can't come to ND to sell their produce. However, if MN residents come across and purchase in ND, that is allowed.

Chairman Luick: So there is some sort of protection for us in the state?

LeAnn Harner: It is just common sense, they can't sell here, we can't sell there. Continued with testimony and talking about the bill page 4-5.

(1:19:00) Chairman Luick: What is the shelf life of a dirty egg?

LeAnn Harner: In my house eggs don't last that long! Certainly a month or more in normal conditions.

Senator Myrdal: You used the language "Food operators have a stellar record of food safety". So do a lot of big industrial corporations, we still have recalls of lettuce and all sorts of things. We are trying to protect consumers, don't out weight those risks. Can you defend that a little better?

LeAnn Harner: All food has the potential of causing food borne illness. It is a risk every time we eat. You don't buy food from a cottage food operator because you want the cheapest available. There is so much labor you're paying for. The operator, because it is a personal transaction, if they make someone sick they are out of business. It is extremely important to these people to be safe.

Senator Myrdal: I understand the friendship. You said you're out of business, but the consumer is also very sick. There is an overall responsibility upon the state for public welfare. It is our responsibility to do the upmost to protect citizens or consumers, even more so then protecting people's freedom to well or make food.

LeAnn Harner: I appreciate that. When you look at investigations into food borne illness, they can't pin point the source. Even with big manufacturers there are a lot of people and a lot of hands. With cottage food operators, you know who it is and where it's at. We have to do our best. We don't take this lightly.

Senator Klein: I've been asked if a friend can put up a sign that says it is a non-inspected kitchen, so I don't have to have the food inspector come in. That is the hard part. We are trying to balance the folks who are really in business. We understand what you do, but also understanding what others are doing.

LeAnn Harner: It is hard to tell people after they've made a big investment that we are going to let people compete with you. I have registered dairy goats. I can't sell them as cheap as the guy who doesn't have his registered. That is a decision I made. I am a small producer, so I have tons of time into my goats, versus someone who has a lot of goats. The cost of mine will be different than theirs. The cost of someone who can put 4 loaves of bread in the oven versus 50, that will be different. We have people who have built up and are opening commercial places. It is a competition. Commercial people can always sell more then we can and they can do it more efficiently. Continued with testimony.

Senator Myrdal: With labeling, you said they have that discussion person to person. When it comes to liability issues, I appreciate you say we have very few incidents of food poisoning. It isn't enough to be proud of your product. Then why is the labeling bad? Gives your product more value, doesn't it? I look at these things at the farmer's market. I think the labeling protects the cottage food industry more than the consumer.

Senator Larsen: On page 1, line 23, they cut out drink on there. Will this hinder something like a lemonade stand?

LeAnn Harner: When you delete drink, to me that means no drinks. If there is an exception somewhere else, I don't know.

Senator Klein: Julie said lemonade stands are not included. Back to labeling, Julie said the only labeling we need is time and temperature. No ingredient requirements?

LeAnn Harner: Yes, that is what is required. But with shell eggs, if you don't require them to be refrigerated, they don't need a label. Before it just said safe handling instructions. The Institute for Justice is sending testimony that discussed the cottage food movement as a

whole to give you some background nationwide. They will talk about the economic boom for families as well. Brenda Daniel is one of our great success stories.

Provided Attachment #4, written testimony from **Brenda Daniel Owner of Pour Some Sugar Custom Cakes and Bakery, Ray ND.**

Senator Klein: The lady from Ray will not be hindered at all from what we're doing here. I don't think this is tying anyone's hands. I hope you don't think there's a boogieman in the details. Legislative intent is not to hinder what is being done.

LeAnn Harner: We are willing to work with the committee that helps everyone and makes these things very clear.

Chairman Luick: SB 2335 is up at 10am for today, is there someone here to testify on that? We are running late, and we won't have that hearing until this afternoon. Further testimony in opposition?

(1:38:45) Representative Kathy Skroch, District 26: I respect this committee and your wisdom. This is an uncomfortable area we are trying to find clarity. Passed out Attachment #5, examples of foodborne illnesses in the last year. Testified in opposition of sweeping changes to the cottage food laws. Also stand in support of amendments proposed by the cottage food industry representatives. There was a time when all the food in this country was all direct producer to consumer. We might go to far as regulators. May food poisoning with mass issues, involve mass produced and processed products. Consumers have started looking for other sources to reduce their exposure to these things. They choose to produce their own products or homegrown and home raised products. I know what is exactly in my jars. Before the cottage law was passed, I was being contacted by people with business startups. Here we are only 2 years later, reversing those main purposes of freeing up this industry. Has there been a sudden rise in food poisoning epidemics since the passage of 1433? I urge this committee to let free enterprise happen. Resist overreaching. These people regulate themselves, they know the consequence if they make mistakes. They don't have a corporate law firm to rescue them if they mess up, they take tremendous precautions. I encourage the committee to be cautious in the regulations.

(1:43:42) Senator Klein: There is no overreach here. We're just clarifying what we started last time. You've been here, you know how we create clarity and rules. That is our goal. You should have sat through the explanation of the whole bill, then you'd know that everything happening right now will keep going. We just are clarifying how it works. Nothing really changes. Be cautious what you wish for.

Representative Skroch: I understand that. I am simply stating this because we are not able to prevent every single incident even as careful as we may be. There are businesses depending on our being cautious as we walk through this and not overreaching. We just want to allow them to continue to flourish.

Senator Hogan: All the expansion in this bill, do you oppose that?

Representative Skroch: I am only interested in defending those people who are trying to build these cottage industries in the best way they can. I am just suggesting we have caution in regulating.

Senator Hogan: I understand that issue, but there is major expansion in this, do you support that?

Representative Skroch: I support the expansion, yes.

Chairman Luick: Take a 10-minute break and we will continue. If your testimony is in repetition, just focus on the ideology to keep it from being non-repetitive. We do want to hear what you have to say. Recessed hearing on SB 2269.

10 Minute Recess.

Chairman Luick: Continued with the opposition to SB 2269.

(1:47:42) Wendi Johnston & son Sam Johnston, Kathrine, ND: Testified in opposition to SB 2269 and provided Attachment #6.

(1:51:56) Abby Clyde, Dickinson, ND: (No written testimony.) Raised in Medora working in the family restaurant. Lives in Dickinson now with her disabled child. If this bill passes I won't be able to sell the pressure canned items I make the most money on. I sell over 800 jars of salsa a year. This makes me so emotional because my daughter is so important to be, and I cannot put her in care of other people because she can't speak. I have to stay home. If I can bake from my home to provide extra income, then me as a single parent can keep the roof over our heads and keep her with me with all the devices and tools she needs to be in school. In the summer months I have a booth at BisMarket selling baked and canned goods. Because of the changes with the cottage food laws, I was able to pay off 16 year of debt, and 8 years of student loans this last December. My 6-year-old daughter had brain damage at birth, with this extra income we were able to get a specialty tablet to allow her to communicate. We were able to provide her school with one and purchase one for her dad's house too. She just started Kindergarten and can verbally say her name. The items I make and sell, I know kitchens is allowed, but that is only in a frozen state. I sold over 1,200 kuchen in Oct-December of 2018 from my home. Those items that are fresh baked are less than 12 hours out of the oven and people pick them up. I've had over \$1,700 worth of sales in Oct-Dec. I have had zero complaints, sickness, or contamination. All my items are sold with my phone number, contact info, email, the date I produced them and gluten or dairy free. I also label allergens. I also make a lot of concentrate beverages that are shelf stable that I can. I also make homemade juices that are shelf stable. We do a lot of homemade noodles. I called NDSU to see how I could check moisture levels; they did not have an answer. When I called them asking about the acidic level of Sauerkraut. When I asked how to test the PH level, their suggestion was PH test strips used in fish aquariums. I have been hospitalized for having food poisoning in the past, that is not what I want to happen. I have a huge cliental built up and I hope to someday have a commercial kitchen. My parents own the Cowboy Café in Medora, my fall and winter baking and canning is done in their kitchen. When I went to Stark

County Health Department, I cannot label my items as coming from a commercial kitchen, because the inspector has to be there through the process of me canning these items to see how I do it. Because I do it evening, night, and early morning, he couldn't come to inspect it. He said I have to label everything I produce out of that commercial kitchen, as a home kitchen. A commercial kitchen isn't feasible for everyone and then you still have to label it as a home kitchen. This bill may protect some people, but it will make it impossible for others. My goal is to commercialize my kitchen. If this bills stays how it is currently, in the next year I would be able to have that and guarantee a future for my daughter. Please do not pass this, it will hurt us tremendously.

(1:58:46) David Johnson, Hebron, ND: Testified in opposition to SB 2269 and provided Attachment #7. If there was even 1 illness due to the relax of rules in the last 2 years, the Health Department would have informed the public very much. In listening to previous testimony, like taking out sections because it was under other sections. Like with the chickens. It was affected. I can take my chicken to the farmer's market and sell more there. Or as you asked me during the break, what is the shelf life of the egg. I couldn't find one, but as of packaged eggs from the store, they don't have an expiration only a sell by. Even the eggs commercially produced, it is still to the consumer's observation.

Senator Larsen: I was at a restaurant in MN, they took pride in their local meat and produce. In ND, do grocery stores and restaurants reach out to you to get produce? Is that a barrier in ND?

David Johnson: I have approached the restaurants in Hebron, they told me they could not buy from me because they are inspected and my produce is not. I understand that is not the way the rules are actually enforced, but that is people's understanding. I have been able to sell a little to grocery stores. In grocery stores, it all comes down to interpretations of laws. We all have to read and understand the intent. There is a grocery store in Richardton, in the bathroom they have big signs that say "If there is a case of diarrhea or vomit..." There is a whole list of steps and rules of how to clean it up. You go to Walmart; you don't see that. The bathroom in a restaurant, you don't see that. The bathroom in the Capital, you don't see that. They are playing it extra safe. As far as the burden of labeling, when I can a jar of green beans, the jars costs me a dollar, the produce in there, I try to get the same value as fresh green beans. If I made a dollar off that jar, that is pretty good profit. Stick on labels cost around 35 cents apiece or more. I just reduced my profit margin. When I was growing up, my mom canned everything. We never got sick. We've been doing food preservation for hundreds of generations, these acidifying rules aren't necessary maybe.

Senator Klein: We all have experiences with canned goods. My mom canned everything too, but the neighbor lady died from eating canned green beans. I remember that vividly. That is how we grew up on the farm. You spoke to the sell by date, you may be old enough to remember there was no dates on anything 40 years ago. I think those are a marketing tool. When it comes to labeling, that has to be careful and it's required. We are told it is for the consumers good. In small businesses there is still that relationship. I am suggesting there is a difficult line from the folks who have to comply. We're trying to find a happy medium, so we have folks feeling totally safe. One outbreak is too many outbreaks. These things are important, but I don't find them overbearing.

(2:10:34) David Johnson: Overbearing, maybe not. I understand the intent. But it does hamper our business. I do post a sign that says the products I sell were produced in an uninspected kitchen. I charge more than Walmart. The general public doesn't come to me because they want a general canned good. The produce we sell was not picked when it was green, stored in a big factory, exposed to gas so they could ripen. These will be fragile. This is a conversation. People come to the farmer's market and want to debate if when I'm doing is right. It is their absolute right to walk away and not buy anything from me. It's not like going to the grocery store. The one on one conversations cover a lot of that. How often do you take a frozen pizza and put it in the oven and then have to go dig through the garbage because you didn't read the label?

Senator Klein: Small communities still provide that one on one.

(2:15:15) Mirek Petrovic, Rugby, ND: Testified in opposition to SB 2269 and provided Attachment #8. It's not about saving every person from every bacterium, that is impossible. This is a personal freedom issue.

(2:24:50) Senator Larsen: If we do have a problem of the local grocery store can't reach out to the local gardener. If that was opened up, would that help them thrive? Or is he restricted by the state?

Mirek Petrovic: It is a problem. Grocery store owners would like to have fresh produce; I have sold to many of them. But some places like Minot, the grocery store owner says no because there is no inspection. Local means that if I come to a store owner and wanting to supply them with a type of produce. Not just one box, if I wanted to do that, I'd go to the farmer's market. I mean supply all his tomatoes for a season. The BisMan Food Co-op and other specialize in local produce. We have a few outlets. But I don't think people should have to come and be emotional about their rights and what they can do according to the law.

Senator Larsen: This is off topic. You came from a communist country, young people from 18-30s or 40s are starting to embrace this socialism or communistic life philosophy. What do you think about that?

Mirek Petrovic: I think they don't understand their own words. I was 14 when it all ended. My parents and grandparents lived that, and I remember a lot of it. It was a government that promised to take care of people. They payment for that was, everyone lived the same and there were no opportunities. Everyone had the same furniture, the same food people got tired of it. This is not in human nature, to be taken care of by a government. We want to take care of ourselves. We want to engage in voluntary transaction with other human beings. The young people who want our government to take care of everything from cradle to grave, they don't understand. Who's going to pay for it? My country went bankrupt. We can't do that, it is impossible. This is what people don't understand. If you have everything and you are taxed to death, so you save you have a warm home, there is food on the table. But you can't do anything more than that, you are locked in. That is not life that is worth living.

Senator Klein: You've done this awhile and you've continued to expand. Do you have a commercial kitchen? (Yes, that was confirmed.) You are bonified then, are you not?

Mirek Petrovic: In Anamoose, yes. The food hub grew into a bakery and we opened a restaurant. This year we served 1,500 or more people with local food. We are following the Health Department rules, we are certified. It is a licensed establishment. People come and expect that to be there. On the other hand, I still believe anyone has the right to go and buy anything from an unlicensed place. I have a choice to go to a licensed place or an unlicensed place. That is my personal freedom. We should not ever think we can restrict these people.

Chairman Luick: On the changes from 2 years ago to this year on this bill. What are the changes and the most confusing parts?

Mirek Petrovic: The eggs, raw milk, cut leafy greens. We are putting a restriction on words like “cut” and how you cut it, is it chopped is it a baby green that was cut on the stem? It is always all these “What ifs”. Anything can happen, but because life is dangerous that is what makes it worth living if it is freedom. I am for freedom; we all have the right to engage in transactions. If I want to go to a licensed place, then I will. I don’t think this movement should be stifled, it isn’t a new thing, every other country has open markets. I think we should embrace it.

(2:34:10) Danielle Mickelson Rolla, ND: (No written testimony.) Testified in opposition to SB 2269. Small producer of vegetables, fruit, canned goods, and sourdough bread. Also the manager of the Rolla farmer’s market. There is a direct contradiction between Century Cody 23-09.2, the one that allows fund raising using foods. I don’t think we should remove the foods list that includes things made with meats. We allow buckets of sloppy joes to come to school gyms to be sold to people who know who their buying it from. Just like if I were to sell sloppy joes in t a bucket at farmer’s market. Farmer’s markets fall into the same category as fundraisers, because you know who you’re purchasing from. There was also a question between the acidity levels in canning and vegetables without acid added. The difference between those 2 is the veggies that do not have a PH level of 4.6, have to be pressure canned. There could be language that veggies produced without the addition of acid, be pressure canned by the producer. That would solve that problem easily. Also then the removal of the whole, uncut vegetable deal. The cottage law prior, included the fact it could be cut. We were able in a small market, to cut large cauliflower heads and cabbages in half, legally, to provide to our elderly customers. By removing that language, you remove our ability to do that.

Senator Larsen: How old is your sourdough starter?

Danielle Mickelson: It is about 18 months old now.

(2:37:47) Annie Carlson, Mercer, ND: (No written testimony.) LeAnn told me my job was clean up. Our family invested in a commercial kitchen, after being a local producer for many years. Why can’t we just require these people to use a commercial kitchen? I only spend \$69,000 to outfit that kitchen to specifications. If you were to do a brand new, ground up construction, the minimum cost is \$100,000. This is a huge financial investment, especially for family farms that are your producers. Having a free cottage movement allows for entrepreneurship and test marketing that all companies do. I love me a good church fundraiser or sports booster luncheon, but think of what we’re saying to our citizens. When a

friend of mine made 15 gallons of his famous chili to sell at his Catholic school fundraiser, that was legal under the title "Fundraiser". But he couldn't turn around and sell it super bowl Sunday to his neighborhood. Look at the flip side of what we're asking people to do. There is a differential in the market place of where you can do cottage foods. Our growing window is very short. When it's tomato season, everyone has tomatoes. When it's sweet corn season, everyone has sweetcorn. If you can preserve them, it extends your income window, diversifies you in the market place, it allows you sell out of season, to make use of the excess you have. That is important. I heard comments related to customer confusion. To be clear, if you require of us to put a label on it, yeah it will cost us extra money. Now guess what, the cost of the green beans just went up. As business owners, you have the ability pass on your costs. Is it impossible to put on a label with whatever you want us to say? That is not the issue. In small towns, our local cafes are closing. How do we get that next generation of small business owners, and grocery store owners to stay home and invest in their local communities? Starting as a local food producer and realizing that love is a great way to start. They learn these skills through doing that. Bismarck requires a food safety course in order to produce and sell foods at the farmer's market here. People learn a lot of good info through this. Why don't we think of that as an option? Asking for education and asking the health department to build relationships with these people. If this bill passes as written, 3 vendors at BisMarket will be out of business. BisMarket also tracks all their sales in each area. They have also tracked cottage food sales for the past 2 years. Sales have dramatically increased because of having cottage foods at the market. You are buying from a person. When you call I answer the phone, I work with you on the menu, I will cook and transport all the food, I will dish it all up and I will be the one who shakes your hand and cleans up your table at the end of the night. These producers have a very personal relationship with their customers. You cannot legislate integrity. The vast majority of foodborne illness comes from not washing your hands. You can have as many sinks as you want, but you still can't make sure someone washes their hands. As safe as you want to make this food, you can't stand over someone and make sure someone does something. You can provide info on the importance, you can provide education, instructions, temperature, etc. We provide that. But you still can't watch everyone everywhere. Let's talk food choices. Muffins, cakes, jellies are currently legal. What do we want the citizens of ND to be eating? The USDA dietary guidelines say we need to eat more fresh fruits and veggies. What about allowing our consumers to choose local fruits and veggies. Not just whole and uncut. What about allowing people to make Pico de Gallo with those fresh tomatoes and onions and peppers. Or a coleslaw. What about offering those things we should be eating anyway? Rather than encouraging birthday cakes, muffins, and jellies.

(2:48:12) Chairman Luick: Welcome back. The education portion you were referring to. How long is that class? What is the involvement of that?

Annie Carlson: It is 3 hours and you take a test at the end. I travel up to Minot, it is a great morning spent with fellow foodies. They do a great job of going through safe handling, time and temperature control. I always learn wonderful things and am reminded of why we do what we do. Like why we store meat on the bottom shelf.

Chairman Luick: The Health department or extension that does that?

Annie Carlson: Health Department. And It costs about \$10. There are also online options.

Senator Klein: Are you still in the chicken business? (That was confirmed.) We called it Annie's Law back 6 years ago. Having done what, we did back then, we provided that opportunity and you started that and make a business.

Annie Carlson: We are still under the 1,000 bird max for slaughter. The bill 2 years ago, allowed me to take them to a farmer's market. Before I could bring them to town, but only what people had pre-ordered. That offered a different avenue to sell. People will buy 1 as the test at the market. Then the bulk orders fill up because of that. Just with chicken and being able to sell it at the farmer's market, opens that door to more income. I know about food safety, I am just as safe now being fully trained and certified as I was 10 years ago. With this competition thing. In my home kitchen, I can only make 5 kuchen at a time.

Senator Luick: I don't even know what kuchen is.

Annie Carlson: We might have to have a sampling! In my commercial kitchen I have 2 big convection ovens. I can do 60 kuchen at a time. If you want to bake from home, you're not a threat to me. When people ask why I testify or Mirek, we're already certified. We are here to say we want more people to have the opportunity to do what we've done.

(2:53:22) Mary Graner, Mandan, ND: I came to testify as neutral, but after hearing everyone I am testifying in opposition. First clarification on the eggs, a fresh egg right out of the chicken will last 30 days on your counter and then refrigerate. If you have a commercial egg where they wash them, those have to be refrigerated. The reason I'm testifying is; I am known as the Corn Lady. I don't want my mother in law to lose her opportunity to sell her homemade goods. We should have the ability to keep doing what we're doing.

Nathan Kroh, Scientific Information Coordinator & Dairy Inspection Coordinator, ND Department of Agriculture: Available for questions or clarifications on anything with poultry or eggs.

Senator Klein: One of the issues we discussed was goat milk and its regulation. That falls under the milk pasteurization ordinance, not under cottage foods, correct?

Nathan Kroh: You are correct. It could also fall under the herd share. You can distribute milk to those who own shares of the goats. But any sales or distribution of any milk that is not under herd share must be inspected through the department of ag.

Senator Klein: That falls under the ag department? (Correct.) Also the eggs, there is a permitting process to provide opportunities for those who raise eggs. The language back then was I could go to the farm and pick up as many eggs as I want, but my egg guy can't bring them to my house in town. How does that currently work?

Nathan Kroh: We do not regulate eggs that are sold directly to the end consumer by any farmer. They can sell direct, there is no requirement. We regulate and provide licensing for egg producers who want to sell wholesale for commercial resale. That is where the department of ag is involved with any egg regulation. Above 3,000 laying hens you would have to provide for commercial sales, which is under the USDA. We provide anything under 3,000.

Senator Klein: So at the farmer's market, who regulates the fact that the eggs aren't refrigerated? How do we sort out something that is under the ag department versus something under the health department?

Nathan Kroh: That can be a grey area. Prior to the implementation of the this, the requirement was most products had to come from an approved source, eggs would have been an approved source. This is why we had provided that inspection. If going through with this, they allow for sales at the farmer's market the health department would no longer have that requirement. The requirement for refrigeration would not be involved.

Senator Klein: Speaking of organ meats and meats in general. It is not under the cottage foods or the health department, but under the meat inspection rules that you are the overseers of. How does that apply when we're talking restricting with pet foods?

Nathan Kroh: Anything that is considerable edible for human consumption is required to be inspected. If a person takes the animal to the slaughter and they want the organ meats, they are welcome to keep it, they cannot give it or sell it away. If it is inspected, they get stamped and then they can be sold. The production of food for pets is covered by the department of ag. I don't know what they require or what the inspection process is.

Senator Klein: Back to chickens, we've provided that opportunity for some time. Did you see a change in the way we were allowing chicken sales after last session? Where we provided more opportunity, less opportunity, and now we're restricting opportunity. I'd assume Annie gets to have 2 inspections, meat and then health department? Talk to us about poultry.

Nathan Kroh: The exemption is required for everyone who slaughters and sells birds. We register them, there is no inspection for 1,000 and under. We only ask they keep records of how many birds they slaughter and who they sell to. They used to require sales to be on farm, we opened that up to farmer's markets through the cottage foods. That is improved. We require all poultry slaughterers to register with us. I do agree with the person who said the food cottage operator raises and slaughters no more than 1,000. Our current rules say they have to raise and slaughter, we don't care how many more are raised.

Chairman Luick: So how about the sloppy joe question. Why is it that it is okay over here, but not over here in this area?

Nathan Kroh: My expertise is anything related to the manufacturing of food for wholesale, the sales at retail or fundraisers I cannot speak to.

Chairman Luick: Is that a USDA has control over? Or us as a state?

Nathan Kroh: It would be under retail exemption, so the USDA is not involved in that. That would be local health units.

Chairman Luick: Closed the hearing on SB 2269. Committee will come back this afternoon.

(Recording was paused and restarted on 2/13/19. See separate minutes for amendment discussion and vote.)

Written testimony submitted by email:

**Julie Garden-Robinson, Ph.D., R.D., L.R.D., Professor and Food Nutrition Specialist
NDSU Extension:** Neutral testimony provided as Attachment #9.

Matthew & Ronda Woods, Jamestown, ND: Do Not Pass recommendation provided as Attachment #10.

Sharon Duhe', Fargo, ND: Opposition testimony provided as Attachment #11.

Elizabeth Delgado, Owner of Sincerely Yours Sweets: Opposition testimony provided as Attachment #12.

Riley & Michelle Kuntz, Dickinson, ND: Opposition testimony provided as Attachment #13.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
2/8/2019
JOB # 32455

- Subcommittee
 Conference Committee

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| Committee Clerk: Florence Mayer |
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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota Century Code, relating to cottage food production and sale; and to amend and reenact sections 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

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| None. |
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(RECORDING STARTS IN THE MIDDLE JULIE WAGENDOR'S INTRODUCTION. NOT SURE WHAT WAS PRIOR.)

Chairman Luick: We heard the testimony yesterday, today we will open this up for a conversation to find what everyone thought of the testimony given.

Vice Chair Myrdal: For the committee's information I talked to Tyra as we left that hearing. On page 5 line 6 deals with the poultry issue. From what I heard in testimony, I think it is okay we deal with the numbers issue there. I asked her to send me information. The amendment I had written up, is that we remove quote "races and" we over strike that. Julie, is your department okay with that?

Julie Wagendorf, Director of Food and Lodging, ND Department of Health: We are. I just wanted to point to page 3 line 31, it says the slaughters no more than 1,000 poultry raised by the cottage food operator during the calendar year. I think legislative council rearranged those words and didn't anticipate making any changes. It has always been said that way, but it is a good catch if it is not what it was intended to be. It is a good amendment now, and would have been last session too.

Senator Klein: Going back to the egg discussion, we heard a lot of back and forth on whether we could sell eggs, or washing eggs, whether the egg law applied to the Ag. Department, etc. Will you tell us one more time about eggs?

Julie Wagendorf: If you want to sell your eggs to another retailer at wholesale, so then that retailer then sells to the consumer, the retailer needs to have those eggs come from an approved source. The Department of Agriculture has an egg dealers license; it is \$10 a year.

That includes a brief inspection, how to wash eggs, making sure there is an overall sanitary level of the pen, and then how to candle eggs. If you were to sell to a retailer, you would need that license. If you want to sell directly to the end consumer, on the farm or at market or any other venue mentioned, you do not have to have a dealer's license. In that case it simply means it is not regulated. There is no requirement for washing, transporting refrigerated, or even candling. As far as what is safer, leaving the membrane on and leaving it shelf stable, versus washing and refrigerating it, under the food and drug administration, eggs are graded if they are ready to be sold if they are washed, candled, and refrigerated. Speaking to the science, I am not disputing it may be shelf stable unrefrigerated for 30 days, I would defer that to the department for what the USDA recommends. All I can say is at the retail end of things, you can't sell an egg unless it goes through those steps.

Chairman Luick: I am lost on the candling part, what is that?

Julie Wagendorf: You literally put it front of a light to make sure the yolk hasn't turned into an embryo.

Chairman Luick: Chances are, if you have a facility that is collecting eggs 2 or 3 times a day, there won't be an embryo in those eggs. Or could there?

Vice Chair Myrdal: I buy from a local person. For a year and a half, I didn't eat eggs, because I cracked one open and it was an embryo. They don't necessarily check.

Chairman Luick: To get that permit, it is as long as they know what they're doing with the candling and cleanliness?

Julie Wagendorf: Correct. This is under the department of agriculture, not the department of health. There is also a rule that you cannot reuse the carton. That is only if you want to whole sale to another retailer.

Senator Larsen: The world doesn't refrigerate their eggs. So when I go to Mexico on a trip, they aren't refrigerated correct?

Julie Wagendorf: I can't say for sure. That could be.

Senator Klein: If I want to buy eggs from someone who is raising them, I get they need to have the permit and all that. If I have a few eggs, I have 20 chickens and on I'm going to the farmer's market, can I sell those there? I'm hearing people say they can't do that; they are restricted from doing that. Are we?

Julie Wagendorf: I don't see how we are. It is recommending the safe handling of those eggs. If that is being disputed that it is not required to be refrigerated, I would refer to the Department of Agriculture and see what their recommendation is. If there is difference from USDA then FDA, then let's go with USDA. The resources suggest they be refrigerated. If there are other recommendations that it shouldn't be, then I wouldn't stand in the way of that.

Senator Klein: It was my understanding that we were not restricting anyone who just wanted to sell a couple dozen eggs to the person at the farmer's market. We aren't stopping them.

We aren't requiring all these steps. Is the language the confusion on top of page 5 under #1, line 8? Does that suggest that there is a prohibition?

Julie Wagendorf: I don't know. We're not asking them to get an egg dealer's license.

Senator Klein: All the questions I wrote down all were something folks said they couldn't do anymore. I think we can do this still. We aren't stopping them. Annie suggested that because of what we're putting in here, she can no longer take frozen chickens to the market, you would have to come to her house.

Julie Wagendorf: That is not true. Even if she wasn't licensed, you can take poultry or poultry products.

Senator Klein: I don't know if you saw her chart. She had a bunch of things you can't do, and I don't think she was correct.

Julie Wagendorf: She is not correct. Nothing has changed since last year with what she could do with chicken. I don't know how deep they are reading in between the lines, but there was no intent to hold anything back.

Chairman Luick: One of the problems I have with this is we're getting so many emails that say "kill this bill we want it as it was last year", last year they were willing to take it to court to stop it as it was. The confusion is mounting.

Vice Chair Myrdal: I noticed you took a lot of notes during the testimony. I got those things too like we can't buy fresh bread anymore, etc. The only thing I read into very clearly in the definitions in section 3, is some of the acidity issues with the canned goods. Can you clarify, what is it that we absolutely can't do, that has changed from how it was the last 2 years?

Julie Wagendorf: That is part of the problem, I don't know what was allowed 2 years ago. You can't sell meat, wild game, poultry, fish, seafood, or shellfish. You can't unless you do the 1,000 bird poultry exemption, and you can do eggs. You can't do low acid canned food, because of botulism. Any other canned food that has acid, but is not meat, wild game, poultry, fish or seafood or shellfish, you can do. Food requiring temperature control for safety, that is where we're getting more into people wanting to do prepared foods. That is what food establishments and retailers are licensed to do. Those are not carved, unless you intentionally do that. People hear food freedom and think they can do anything they want. We are just asking for clarity.

Senator Larsen: Back to the egg thing. Can eggs not be refrigerated please? I'm looking at page 5 line 21, it says "Except for shell eggs, which have to be maintained under refrigeration". Can we cut that out? Can they just be in a box at the farmer's market? Then on page 6, there was another egg thing. That looked like new language to me?

Julie Wagendorf: Right, it is because it's safe handling.

Senator Larsen: If we can cut that out, then we can move on. Either yes or no, then that issue can be done.

Julie Wagendorf: So it would say “except for shell eggs. (Period)”?

Senator Larsen: Yes, just let that go back to where it used to be. We used to be able to eggs on the shelf before.

Julie Wagendorf: Right, it wasn't prescribed one way or the other before.

Senator Larsen: Then the 3,000. So now they can go back and have their little bag of eggs on the shelf at the farmer's market, without having them in a refrigerator.

Vice Chair Myrdal: As long as they aren't washed.

Julie Wagendorf: They know what they're doing, right?

Chairman Luick: Yep, they know what they're doing. There is no doubt in my mind.

Julie Wagendorf: So transport and maintain frozen by a cottage food operator except for shell eggs, period.

Senator Klein: The lady who made the 1,200 kuchens, and they picked them up from her home. There is no prohibition. If they're coming to her home, we didn't stop that did we? Yes, or no?

Julie Wagendorf: Under labeling, on page 6, line 14, #3 this is language from last year's law: “Cottage food operator shall label cottage food that requires time and temperature control for safety with safe handling instructions and a product disclosure statement. The safe handling instructions and product disclosure statement must...” And then down to line 23 “previously handled, frozen for your protection, refreeze or keep refrigerated.”

Senator Klein: But there is no new prohibition?

Julie Wagendorf: No, that was always there.

Senator Klein: That was in the old language. She could do it. The other thing she was doing was salsa, and she seemed to imply she couldn't. If she has a PH calibrator, can't she do salsa.

Julie Wagendorf: Absolutely. Salsa is just a canned food.

Senator Klein: As I was listening to that particular testimony, I don't believe there was anything that she couldn't do. Well there was some sort of fancy juice she was making, and that may have been questionable, Julie?

Julie Wagendorf: You can only be so prescriptive in the law, which is why we write administrative rules. If it doesn't require time and temperature control for safety, it's okay. It depends kind of, you should know your product. If your juice is at a safe PH level and it doesn't require refrigeration, then you can sell it concentrated and frozen or you can package

it, or can it. There are so many products you can possibly come up with, we just need it to be in safety guidelines.

(21:09) Vice Chair Myrdal: Go back to the labeling part. I can still go to Klein's house and buy 3 fresh kuchen or 3 loaves of bread that haven't been frozen?

Julie Wagendorf: Yes, if you go to page 5, line 20, the key word there is transported and maintained. The intent of that was if you're going to be driving it for hours or going to a show. But if you're going to my house or picking it up, it doesn't need to be frozen.

Senator Larsen: The discussions with page 6 and labeling. There was a little heart burn that it was going to cost me 35 cents for a label. As I've looked at farmer's markets, everyone has a little thing on their stuff when you buy it. No one reads the label anyway. The PH thing though, I found it interesting that the one lady called to get information from the state and they didn't know. I thought that was interesting. We ought to just cut that program, since they don't know anyway.

Julie Wagendorf: I can't speak to that. I think people who suffer from allergens read labels on everything they eat actually. As far as what NDSU's advice was, you can test PH with an indicator. The law is saying it is more appropriate to do with a calibrated PH meter, and there is a way to do that easily.

Vice Chair Myrdal: With all due respect we hear, if I was so proud of a product and had a growing business, I fail to see how it is an un-do burden to put one little sentence on the label. I'm not going to go and buy a can that doesn't say anything. It will say what it is, and if it's just a sticker I wouldn't buy it. I don't understand, if you're proud of your product, it helps you and protects the consumer. I sell horses and I'm proud of their lineage, I will give them 5 pages of the stallions all the way back. They kept saying it was more expensive than Walmart, well I expect it to be. 30 cents wouldn't take me away from anything. I fail to see the problem.

Senator Larsen: There were 2 issues I wanted to touch on. The one lady who made truffles and wanted to insert the after baked or cooked. I thought that was interesting. As I read her testimony, I think it was on page 1, line 11 after "Baked" insert "or otherwise cooked". She had another part on page 1 line 22 where it said the same. Then the last part that hit me was where they cut out "And drink" because of the one fellow making the cider. I think we need to now strike that "drink" off, because that cider is a drink.

Vice Chair Myrdal: Then you open drink wide open to other things.

Senator Larsen: Then let's open it wide open. It can't be wine, that is under something else.

Vice Chair Myrdal: There are fruit drinks that are not acidic that would go under that.

Chairman Luick: The changes on line 11 would be okay?

Julie Wagendorf: I don't have any issues with that. We had those discussions as well because there are things like no bake cookies. That is why we put the word "usually". It wasn't

meant to be all encompassing. If there is a better way to say that, I'm okay with that. As far as the food and drink, that was another example of removing redundancies from existing language. Working with LC, it makes no difference to me if it's in there or not. Food is defined as food and drink. Drink is food. It wasn't removed by anyone's request.

Senator Klein: That would bring me to lady who was doing the cider. Tell me if she could sell it or not and whether she could do it under the current law? Or does that fall under a different category?

Julie Wagendorf: The thing about juice is, it has caused outbreaks of E. coli. The 4.6 is only the magic number for botulism. Salmonella and E. coli can grow down into those acid environments. When you're talking manufacturing juice, if you're going to market it as a shelf stable product, it requires to be pasteurized. If you don't pasteurize it, it requires a warning label saying "Warning, this product has not been pasteurized and therefore may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." Under our food laws, if you have an unpasteurized juice that is acidic enough that it doesn't require refrigeration, it is not recommended to be served to children 9 and younger. When we talk about balancing the risks. There is nothing prohibiting juice. If it doesn't require refrigeration, you can do it. I don't look at it as inhibited. I don't think it's very safe, but we're not nitpicking that, we just want clarity in the law. If the committee would like help with the wording, I can help with those amendments.

Chairman Luick: Do we lose any credibility of a product itself if it is dehydrated? Do acid bubbles stay the same, PH levels stay the same?

Julie Wagendorf: Page 5 line 15, subsection 2- part B "the Safe Moisture Level". If you remove moisture, bacteria need water to maintain. That's why dehydrated produce is okay. Hopefully it's done properly, but it shouldn't sustain growth if it's at a safe level.

Senator Klein: I believe it was the sloppy joe question. I can take sloppy joes to the ball game, but I can't sell them at the farmer's market, right?

Julie Wagendorf: Yes. Chapter 23-09.2, the Food Preparers Education Act. This was long before my time at the health department. This bill was enacted into legislation to provide opportunities for fundraising events, bake sales, potlucks. It specifically says, under legislative intent, which was included on the copy of the bill, it says "because facilities are not always available for the preparation of food on site by non-profit, public spirited organizations not regularly engaged in the business of selling food. Or to persons not regularly engaged in the business of preparing or selling food. And who prepare food for sale directly to the consumer, (farmers market, bake sale, or similar enterprise). It is the intent of the legislative assembly to exempt organizations in those situations from preparing food in licensed or approved kitchens. The unintentional mishandling of food may jeopardize the public health and welfare. Whether the mishandling is done by an establish open to public patronage or by a nonprofit, public spirited organization or a person providing limited type of food service. It is the intent of the legislative assembly to authorize the department of health to offer educational support to food preparers." They go on to say the department may adopt rules, there are minor violations giving the department that leverage. The exclusions are that this

doesn't apply to private homes or to the use of home canned foods, dairy products, or meat not inspected. That number is 23-09.2. You may need to ask LC for the history.

Chairman Luick: I think if push comes to shove, we would lose on that. We can't set aside the availability of these people over here who do this off and on for a fund raiser who are preparing meat for people. But yet we're stopping these people over here who have probably more of an experience of cooking meat and working with these foods.

Senator Larsen: We are going down a rabbit hole for a second. Why is it that we can take a chicken to the farmer's market, and that is being a successful thing? But we can't do a rabbit or a deer?

Julie Wagendorf: That would be a question for the Department of Agriculture on the safety of these types of animals under slaughter. We don't cover that with Department of Health. Once it is manufactured and retailed is when I step in.

Vice Chair Myrdal: Any other notes you took that should be addressed as far as misunderstand or lack of clarity?

Julie Wagendorf: The uncut whole product. There was mention that well my grocery store says I can't take whole fruits and vegetables. That comes down to every political subdivision can write their own food code requirements. Local public health units do not answer to the state health department. We have a great collaboration. They have a grower's license, you need to apply for it and pay for it in order for a grocery store to accept you. First district health unit is the only area of the state that has something like that. The farmers were asking for it, because at the retail side there is liability. There are 2 sides to that. They are asking for that.

Chairman Luick: you mentioned a hailstorm and loss of product. What's to stop anyone from going to Jamestown, coming back to Bismarck and going shopping and picking up a whole bunch of stuff there and selling it here at a farmer's market.

Senator Klein: The liability issue with buying local product, they wrapped some broccoli for me, but by the next day, all the insects inside were all over that plastic. It was interesting. With the cutting issue. Can I cut my cauliflower in half, because now that is processed? Was it sanitized in a 3 compartment sink.

Julie Wagendorf: And did you wash your hands, how are you going to store that. It sounds ridiculous to talk about just cutting one head in half. But decipher that from chopped salad or potato salad. Where do you draw the line? Once you start processing, it is processed. I feel like I don't have that strong of feeling about it. If they want to cut a head a head of cabbage in half, I'm sure we can make that happen. They also then talk about coleslaw, how do you separate that and make it make sense for everyone.

Senator Larsen: Just for clarification, back to the cider issue. If it's not pasteurized it goes back to the section of code that we put in on labeling and then they are good to go, correct?

Julie Wagendorf: If there is an amendment. It is not in there now.

Senator Larsen: I though you said food and drink were the same thing?

Julie Wagendorf: Yes, that is true. But as far as labeling, that is only for time and temperature control for safety. This juice does not require refrigeration.

Senator Larsen: So they wouldn't be able to make cider then? They couldn't sell that?

Julie Wagendorf: They can, because it doesn't require refrigeration. If it is at a safe PH.

Senator Larsen: So they are good to sell cider now?

Julie Wagendorf: As far as I'm concerned. No one is going to police this right? it is unregulated.

Senator Larsen: Perfect, then we are good to go.

Vice Chair Myrdal: I would like to work with Julie and Legislative Counsel on these amendments and come back with something for the committee. (Chairman Luick said that was good with him.) Julie is that okay with you?

Julie Wagendorf: Absolutely, we can set up a time.

Chairman Luick: Committee, we don't have anything for 2315, we have an issue with that. Senator Hogan would you explain.

Senator Hogan: I feel guilty. I sent a note to my...

(RECORDING CUTS OFF.)

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
2/8/2019
JOB # 32458

- Subcommittee
 Conference Committee

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| Committee Clerk: Florence Mayer |
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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota Century Code, relating to cottage food production and sale; and to amend and reenact sections 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

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| No attachments |
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(RECORDING STARTS IN THE MIDDLE OF SHAWN QUISSELL.)

Shawn Quissell, Government Affairs Division Director, ND Department of Agriculture:

.... About what was going on in the slaughter plants. So the federal government made the Federal Meat Inspection Act in 1919. At that time that only fell to beef, pork, lamb, horse, but poultry was exempt from that. Up until that time, people like Tyson had their own slaughter plants. In about the 1950s people started asking why it wasn't inspected, so they put a program in that you could have either an uninspected plant or an inspected plant. They would bring a bunch of birds to the inspection plant, if they were bad they'd turn them around and bring them back to the uninspected plant and run them through there. In 1976 they made a poultry products act, which made them have to be inspected. Under that, the poultry law had a carve out. So they had the under 1,000 bird exemption, which we still follow. Then a 20,000 exemption. Everything else above that had to be federally or state inspected. That is the reason why there is 2 different ones. Anyone can do the 1,000 bird exemption; you can slaughter them wherever you want. The only thing we ask is that you register with us, so we know where they're at in case we every have to trace anything. If you do the 20,000, which most of our Hutterite colonies in the state do, you have to have a facility. We inspect you about 3 to 4 times a year. With the rabbit question, it is a meat that has been in limbo. Did that come through you guys or the House to get them added? They are trying to make them amenable to our meat inspection, so that we can provide service. When they aren't amenable, they have to pay for the service. That one is coming through.

Vice Chair Myrdal: I say eat beef.

Senator Larsen: Will they be able to butcher up to 1,000 rabbits? Will it be like the chickens? And there is there something for ducks as well?

Shawn Quissell: They would fall under red meat. So they will be required to have inspection for slaughter regardless of the number. It's not the same as poultry. There is a House bill that passed for eggs where we exempted direct sales to consumers from our egg law. That will help reinforce this. I think it is HB 1081.

Senator Larsen: With the inspection levels, a federally inspected facility and a state inspected facility, how many are in the state currently?

Shawn Quissell: Combined there are 23. We have 14 inspected in processing, 11 are slaughter and processing. I don't know the exact number on the federal.

Senator Larsen: I can't remember what session it was, but I thought there was a situation where you could only slaughter horses in a slaughter facility. But then you could slaughter goats, pigs, dogs, everything in one slaughter facility.

Shawn Quissell: Correct, they don't allow it to be done in the same facility as red meat animals.

Senator Larsen: Could you explain why that is?

Shawn Quissell: I think basically trying to make it more difficult when they were trying to outlaw the slaughter of horses. You had to have separate facilities and then you had to pay for the inspectors to be there, then that is ultimately how they ended it, they took away the federal funding.

Senator Larsen: Because there is no difference between any type of animal being slaughtered in a facility.

Vice Chair Myrdal: To shed some light on the equine industry. What they did is basically PETA cleverly shut down the federal inspections on horse meat, which has been devastating to the market. I shouldn't say this on record, but we have a farm and if I have to euthanize a horse, we do. We do it humanely and burry them. But if you live in Fargo and have a fancy show horse who is blind and worth \$23,000, you now need a vet to come put them down which is very expensive. Then you have to have disposal, which is also expensive. Instead of having the market, it has hurt it. So now there are a lot of horses you can buy for \$200 that should not be alive because they are dangerous, they are bred horribly and they hurt people. That is just the background. We tried in past sessions to reestablish a humane slaughter place. PETA hurt horses, they didn't help them.

Shawn Quissell: It is in code under our inspections. There have been talks of opening something on the reservations or other places trying to do it. Currently, you'd have to go to Canada or Mexico.

Vice Chair Myrdal: Unintended consequences.

Senator Klein: Of the 7 or 8 exempt facility and 15 established, how many do the feds inspect?

Shawn Quissell: There are 23 total. So those would be the federal establishments.

Chairman Luick: Committee, we have the wine bill yet...

(RECORDING IS CUT OFF.)

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
2/13/2019
JOB # 32694

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to cottage food production and sale; and to amend and reenact sections of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

Attachment # 1 - 2

Recording was paused from 2/7/2019 and picks up at 3:06:54 on 2/13/2019.

(3:06:54) Chairman Luick: Called the committee to order. Roll call was taken, all members were present. We will do some committee work and work on the amendments of SB 2269.

Senator Myrdal: Provided Attachment #1, the proposed amendment for SB 2269. Covered the language that they will strike out.

Senator Larsen: If I'm going from Surrey to the farmer's market in Minot. My apple pie needs to be frozen, not refrigerated?

Senator Myrdal: On page 5 line 7, food requiring time and temperature control for safety. Something with a cream base would require it. Apple pie would not require temperature control. You can still buy bread fresh. They are skimming through and not seeing the definitions. There are very specific definitions and very specific rules from FDA and USDA. The original bill from 2 years ago said "Other foods and drinks", that is anything. That was a mistake, FDA and USDA said you can't do that. Referenced Attachment #2.

Senator Klein: The discussion also was put the cream pies, apple pies, you can sell as many of those out of your door as you like. The concern was on the cream pies, they can spoil. When you transport those, they need to be cold, that is required.

Senator Larsen: So before this law, are they being transported refrigerated or frozen?

Senator Klein: Before this law, they were probably just doing whatever they wanted to do. There were concerns because the Minot health district operates differently. We want to develop clarity so whether you're in Minot or Bismarck you still have the same rules.

Senator Myrdal: We can only do so much uniformity from the legislature. The health department has these districts. All of the testimony heard was in health district #1, which includes Minot. They make their own rules. I don't think it should be a blanket, but my concern is that district. Those people need to petition that district, not here. We didn't change the whole fruit and veggie thing, because it's not regulated. They want it back in here, so they are basically asking for it to be regulated. If we say you can cut a lettuce in half, where is the line? We would literally have to put the recipes in here. Because now coleslaw, is that is a cut? We don't do that in Century Code. Whole foods are not a regulation, so we took it out. It is more liberty and freedom, because it is not regulated at all.

Senator Klein: Most of the complaints were from health district #1. When you couldn't sell your produce to the grocer, that was because of Minot, not what we do here. We don't want to change that. We want to allow the free flow of whole foods and vegetables.

Senator Myrdal: I will try to explain that. For me personally it comes down to local control. That is the local health board. Go and petition them, we have given you what we can. The other thing that came up is labeling. That is a protection for the producer. Certainly for the consumer too, but if I was a producer I want them to know the history. That will not cost you 35 cents.

Continued explaining amendments on line 20 page 5.

Chairman Luick: If the eggs are washed they need to be refrigerated?

Senator Myrdal: Yes, page 5, line 20.

Continued with explanation of amendments page 6, line 29.

This bill will truly make us the 2nd least regulated state for cottage foods, we are encouraging this.

Senator Hogan: Could we do a simple 1-page sheet of things this does and doesn't do? Maybe work with Julie. There is so much misinformation.

Senator Myrdal: I can get that done. The attorneys will compare some of the federal things too.

Senator Hogan: That would be helpful to hand out to all of us, to help us address misconceptions.

Senator Larsen: There was discussion of the words "Baked" or "Otherwise cooked", is that in there?

Senator Myrdal: They said it was covered on line 11.

Senator Larsen: Carel Two Eagles wording was "baked or otherwise cooked" on page 1 line 11.

Chairman Luick: Senator Myrdal, what did Julie say about that?

Senator Myrdal: Called Tara to the podium.

(3:20:49) Tara Brandner, Assistant Attorney General & General Council for the Department of Health: The language in this section covers that when it lists cookies. There is also a section on chocolate. Candies and chocolates are covered in the baked goods. As far as a handout of products that are available because of this bill I emailed you the handout Julie has.

Senator Larsen: Someone said that sauces and condiments, no acidified used to be allowed and now they won't. Is that true or false?

Senator Klein: The issue with chickens being okay and then not okay, this doesn't change frozen chickens.

Senator Larsen: And the 3,000 egg limit thing is still fine.

Senator Klein: The egg thing is not in the cottage food; it is the ag department.

Senator Myrdal: Senator Larsen there were several items on that list that were incorrect.

Senator Klein: The discussion about the salsa lady, all she needs is the PH indicator and she can sell as much as she wants. If she's going to make 800 jars of salsa, she wants to make sure it's right.

Chairman Luick: I bought a PH meter for soil sampling, I think it was \$34. I don't know if it's something they can use for this, but it was cheap.

Senator Hogan: Moved the Amendment 19.0887.03001.

Senator Klein: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Myrdal: Moved a Do Pass on SB 2269 as amended.

Senator Osland: Seconded.

Senator Klein: I'm guessing there will be a few more fixes, but I think we have a pretty good product here. It provides consumer confidence. It could have been a lot worse, but we worked diligently to provide something that will be acceptable. There will be more opportunities for fixes.

Senator Myrdal: I agree. When I saw the comparison list from the health department, I realized how unregulated we are. Thank you to the health department. They are doing this for the people. I am a little discouraged that a lot of the testimony and people sharing had incorrect information. We are encouraging the cottage food industry, not discouraging.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent.

Senator Myrdal will carry the bill.

Chairman Luick: The committee will continue with other Senate Bills and amendments.

February 13, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2269

Page 5, line 6, remove "raises and"

Page 5, line 19, remove "must be"

Page 5, line 20, replace "Transported and" with "If transported, must be"

Page 5, line 20, after "for" insert "washed"

Page 5, line 23, replace "Labeled" with "Must be labeled"

Page 6, line 29, after "For" insert "washed"

Renumber accordingly

2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.0887.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Hogan Seconded By Klein

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|---------------|-----|----|
| Chairman Luick | X | | Senator Hogan | X | |
| Vice Chair Myrdal | X | | | | |
| Senator Klein | X | | | | |
| Senator Larsen | X | | | | |
| Senator Osland | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.0887.0300a

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Myrdal Seconded By Osland

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|---------------|-----|----|
| Chairman Luick | X | | Senator Hogan | X | |
| Vice Chair Myrdal | X | | | | |
| Senator Klein | X | | | | |
| Senator Larsen | | X | | | |
| Senator Osland | X | | | | |
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Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Myrdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2269: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2269 was placed on the Sixth order on the calendar.

Page 5, line 6, remove "raises and"

Page 5, line 19, remove "must be"

Page 5, line 20, replace "Transported and" with "If transported, must be"

Page 5, line 20, after "for" insert "washed"

Page 5, line 23, replace "Labeled" with "Must be labeled"

Page 6, line 29, after "For" insert "washed"

Renumber accordingly

2019 HOUSE AGRICULTURE

SB 2269

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2269
3/22/2019
Job #34183

- Subcommittee
 Conference Committee

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|------------------------------|
| Committee Clerk: ReMae Kuehn |
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Explanation or reason for introduction of bill/resolution:

Relating to the direct producer to consumer sale of cottage food products

Minutes:

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| Attachments #1-9 |
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Senator Klein, Co-Sponsor: This bill started last session. As we worked through the rules process, the council suggested that we put some of it in rule. As the rules were being promulgated, there wasn't a consensus. So the rules were not completed. I agreed to work with the Health Department to put the rules in code. The idea was to form consistency and conformity. Now there seems to be confusion.

Julie Wagendorf, Director of Food and Lodging, North Dakota Health Department:
(Attachment #1)

(9:40))

I have reviewed other cottage food laws in the Midwestern U.S. North Dakota would have the fewest restrictions other than Maine and Wyoming. Illinois recently passed a law that models what SB 2269 looks like but they have additional requirements on registration and training.

(14:00)

In shell eggs, egg producers can raise up to 3,000 chickens. The 1,000 bird exemption applies to raising and slaughter of poultry. Raw poultry products are allowed up to the 1,000 bird exemption. That is the same as current law.

(21:00)

Representative Satrom: Where does apple cider fit in? Do you differentiate between pasteurized and non-pasteurized?

Julie Wagendorf: "Food", as defined in our food laws, means food and drink. We are not excluding any beverages. If it has a safe acidity level, it is fine.

The bill does offer language that clarifies that dairy products are not considered a cottage food product unless they are an ingredient of a baked good. Then they must be pasteurized.

Representative Satrom: There was an E. coli problem from apple juice from a company. Is that still a concern?

Julie Wagendorf: It is a concern. Apple juice has contributed to E. coli outbreaks in the past. Food regulations require juice to be pasteurized or a warning label as stated in law. Food laws do not allow unpasteurized labeled juice to be served to children ages 9 or younger or the elderly.

Representative Fisher: Page 1, line 23 has an overstrike on “and drink.”

Julie Wagendorf: Legislative Council chose to strike that because of the redundancy. Otherwise they wanted it defined. We would be willing to put that back in.

Representative Fisher: It is a concern. What about lemonade stands?

Julie Wagendorf: Lemonade stands are fine. It doesn't require refrigeration.

Representative Richter: Page 5, #3, line 16—Can you give more explanation of “time and temperature control”? In my area they sell tamales at the farmers' market.

Julie Wagendorf: The definition on page 2, line 9 gives the definition. Tamales are a good example where they would need a mobile food license. The sale of uninspected meat is prohibited.

Representative Richter: If it is a tamale that doesn't have meat and it is frozen, is that an allowable food?

Julie Wagendorf: As long as it would be considered frozen, I don't see an issue.

Representative Satrom: Wyoming law is the least stringent. Has there been any issues?

Julie Wagendorf: They have not investigated any food-borne-illness outbreaks. They have issues with meat as well due to a misunderstanding. In North Dakota we get random calls. The concern is mostly over meat products. I have received calls on 24 Facebook page sales of meat, 8 food vendors not licensed, and home catering services that include meat. We followed up on one complaint of one illness. Also there were some home goods sold at a grocery store. We had reports of marijuana in brownies and candy. Kratom is unregulated in other states and was part of a salmonella outbreak. It is a dry herb and is questionable as a replacement of an opioid. There have issues with overdoses. There was a case of selling eggs at a grocery store using another dealer's egg carton.

Representative Headland: In Section 4 with the labeling requirements, subsection 2 describes how end users will be informed. Then there seems to be a redundant statement in subsection 4. What is the rationale for stating it twice?

Julie Wagendorf: The reason why the food labeling section is proposed is because the original law requires that refrigerated baked goods need to be frozen if transported and have safe handling instructions. We added Section 4 with the goal that if we can identify those safe handling instructions that the law requires, we wouldn't have to promulgate it in rules. The labeling is only for time and temperature control items which are refrigerated baked goods, poultry and eggs, and frozen fruits and vegetables. If you have those items they need to have the label for safe handling instructions. That lets the consumer know what their responsibility is.

Representative Skroch: The issues since this bill was passed last session, was the misunderstanding due to inaccurate information?

Julie Wagendorf: The rule making process was to define what other food and drink is. The definition on page 1, the purpose of the rules was to define other food and drink. It was also to clarify what safe handling instructions were.

Page 4, line 20, # 9 is struck out. That is one section of the current law that is struck and not moved. We would need to promulgate rules to define what the health department is going to do about those complaints. We stopped because there were questions from legislators and stakeholders as to whether or not they were needed.

Representative Skroch: The list of violations, most of those would not have been permitted under existing law? How would they relate to existing law?

Julie Wagendorf: The meat products were not currently allowed in the law. That had the most issues.

Representative Skroch: Which of the categories would not be permitted under the current law?

Julie Wagendorf: Under the current law, I don't know what you mean by "other food and drink." That is why we need clarification.

Representative Skroch: Are there items under baked goods that would not be included under the current law?

Julie Wagendorf: Under the current law all the baked good items listed in my testimony are allowed. The time and temperature items are allowed. Fruit, jams, and jellies are allowed. Fruit butters are allowed. Cut leafy greens were added. Depending on how you interpret the current law you could do anything. All the rest of the bullet point are things you can do under current law.

Representative Skroch: Since the current law was passed, have you had any reports of food poisoning from the cottage food industry?

Julie Wagendorf: None have been reported. We have sporadic cases of salmonella, E. coli, etc. We don't always know where they came from.

Representative Skroch: Have you had any reports of food poisoning from large producers of similar products?

Julie Wagendorf: We have had outbreaks with unlicensed caterers.

Representative Schreiber-Beck: What is the liability for the state? Is insurance carried?

Julie Wagendorf: The Senate bill doesn't provide for that and neither does the current law. Most of our regulations don't speak to that.

Representative Schreiber-Beck: Because this is allowed in code, it might be assumed the state is responsible.

Julie Wagendorf: No. There is nothing in code.

Representative Schreiber-Beck: What are the penalties for violation?

Julie Wagendorf: The sale of cottage food products is not regulated. So there are no penalties. If you are operating a food establishment without a license, it is a class B misdemeanor. If you are providing products that should be under a license, that would be the penalty.

Representative Schreiber-Beck: Although catering isn't allowed, I hire someone to make food for a large gathering. That wouldn't be under the cottage food law?

Julie Wagendorf: Correct.

Representative Headland: How are we going to verify that pickles are pH tested?

Julie Wagendorf: It is not regulated. This bill states the definition. NDSU extension will provide testing of your recipe. You can also buy a meter for your house. If you are in the food business, it would be a good idea to know the pH level.

Javin Bedard, Environment Health Manager, Grand Forks Public Health:
(Attachment #2)

(1:00)

Domestic refrigerators don't have the capacity to remove the heat from a large volume of food.

Representative Tveit: What is the alternative to cooling larger amounts?

Javin Bedard: Break it into smaller portions, don't stack food. Commercial equipment is designed differently. Cottage food businesses that make food in a larger quantity need to consider this.

Representative Skroch: There may be food producers that are causing illness. Because it can't be confirmed, is that the reason why we don't have data?

Javin Bedard: CDC (Center for Disease Control) provides the estimated number of 1 in 6. Once an investigation starts, the ability to prove the correlation is challenging. It is under reported. The possibility is there.

Representative Skroch: Are you saying the same situation can't happen in a restaurant?

Javin Bedard: The risk is the same. The regulated industry benefits from third party inspection. The cottage food industry doesn't have the same benefit.

Representative Skroch: Have you ever inspected a cottage industry kitchen?

Jarvin Bedard: No.

Opposition:

(1:08:10)

LeAnn Harner: (Attachment #3)
Gave amendments.

(1:36:28)

Representative Headland: Did you offer these amendments in the Senate?

LeAnn Harner: I talked about them. I didn't have them written.

Representative Headland: Why did the Senate reject your ideas?

LeAnn Harner: The day of the hearing I wasn't able to come in. We offered amendments about poultry and eggs. They were both added.

Representative Richter: Why is raw poultry acceptable and cooked beef is not?

LeAnn Harner: That is a USDA rule. They allow an exemption for poultry producers to sell up to 1,000 slaughtered birds without inspection. With a minor inspection you sell up to 20,000 birds. Beef, pork, and other meats can be sold if it is inspected. This bill doesn't touch any of those uninspected meats. At farmers' markets you can sell frozen beef and pork sold side by side with other cottage foods. But they should be inspected and labeled and they have to go through a federal or state inspected facility.

Representative Satrom: You propose cottage food operators to take a food safety class. What if they don't?

LeAnn Harner: The safety courses are simple. The course should have a completion certificate. It can be used as a marketing tool.

Representative Dobervich: Page 5, line 26, garlic and oil. You suggested deleting that. What is the safety issue?

LeAnn Harner: They are concerned about botulism.

Representative Schreiber-Beck: I don't think we should put taking a class into code. You just do it yourself and use it for marketing.

LeAnn Harner: There are people that have extra produce and decide to make a product and sell it. They don't know the rules. If you don't want the food safety item in, I would still support the bill. We are serious about what we are doing and would take classes.

Jennifer McDonald, Senior Research Analyst, Institute for Justice:
(Attachments #4, 5, 6)

(1:52:00)

Representative Dobervich: You talked about scaling back restrictions but you are opposed to the bill. In the proposed amendments we would be requiring people to take a class which would be a restriction if people don't.

Jennifer McDonald: I would agree with LeAnn. The producers take pride in their work and would not be worried about having to take a food safety course. The fewer regulations the better. I am concerned about the restrictions on the types of food. Producers are less likely to expand their businesses in those states that have severe restrictions.

Representative Schreiber-Beck: Dakota Pride individuals are licensed. Anyone can become licensed. What about availability for insurance for the industry?

Jennifer McDonald: They are free to purchase limited liability insurance. I don't know any states that require purchase of insurance.

Representative Schreiber-Beck: You mentioned that most of them make about \$2,000 per year. Do you have a cost of insurance?

Jennifer McDonald: No.

Abby Clyde, Single Mom, Western North Dakota: (Attachment #7)
Some of the fruit butters have to be pressure canned. This bill would not allow people to pressure can. That should be changed.

I have purchased a refrigerated cooler to deliver kuchen. Now this bill is going to stop me from using it.

(2:08:50)

Bonnie Munsch, Farmers' Market Vendor: (Attachment #8)

(2:13:50)

Carel Two-Eagle: (Attachment #9) Page 5, lines 24 & 25 it talks about dairy only to the extent dairy is used in a baked good. What about candies that contain dairy?

Page 5, line 27 seed sprouts of any variety. It doesn't define seed sprouts from micro greens? Micro greens are grown in soil to the stage of the first two leaves. Seed spouts are grown in water. Water is a good place for bacteria to harbor.

I asked our insurance agent about for cottage foods. The price quoted was \$300 to \$600 per month.

When a product freezes, the water expands which causes the cells to burst. Freezing changes texture and changes the flavor.

(2:16:18)

David Johnson, Farmer, Hebron: I liked LeAnn's amendments. I sell inspected beef licensed through Custer Health, butchered chickens, eggs, produce, some canned salsa and tomatoes. I would like to see that the amendments still allow for non-pickled canned goods.

When the law is in Century Code, it can't be changed without a lot of discussion. Therefore, I would like to see this in Century Code.

Annette Carlson, Morning Joy Farm and Kitchen, Mercer: In 2014 we built a commercial kitchen on our farm. The commercial kitchen cost \$60,000 with existing facilities. To do it from the ground up would be at least \$100,000. How can people test a product from their homes before making such a huge investment?

Community events don't have food from commercial kitchens. It is fine if soup is made at home and given for a fundraiser. But it can't be sold from the kitchen for a profit.

The bill passed two years ago says unlicensed catering has to sell to the end consumer. That eliminates unlicensed catering.

The types of food that are said to be alright are not healthy. We should take the opportunity to make more fresh fruits and vegetables available.

I take the food safety course every three years.

(2:28:48)

Emmery Mehlhoff, North Dakota Farm Bureau: read from policy handbook. "We support the right to harvest or slaughter without limitation any commodity and/or livestock for personal consumption or private sale." We oppose anything that infringes on that right.

Chairman Dennis Johnson: closed the hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2269—Committee Work
3/29/2019
Job #34369

- Subcommittee
 Conference Committee

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| Committee Clerk: ReMae Kuehn |
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Explanation or reason for introduction of bill/resolution:

Relating to the direct producer to consumer sale of cottage food products

Minutes:

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| Attachments #1 and 2 |
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Julie Wagendorf, Director of Food and Lodging, North Dakota Department of Health:
(Attachment #1) Amendment #19.0887.04002. I worked with LeAnn Harner for additional amendments.

Page 1, line 23, the cottage industry wanted “food and drink” to be reinstated to understand that “food” also means “food and drink.” To work that in, we included the definition for food on page 2, line 8. That definition is consistent with how food is defined in the North Dakota Food, Drug, and Cosmetic Act Title 19.

Page 4, lines 4-6 to reinstate on page 5, #7. This is to insure there is an understanding that whole uncut fresh fruits and vegetables can used for commercial consumption. A restaurant or grocery store that is licensed can accept whole uncut fresh fruits and vegetables and use them in their products even though they are not regulated.

The reason for the amendment is because the Ward County District has a local ordinance that requires a permit to sell to a licensed food establishment. That is an example where a local ordinance is stricter than state law. By putting in this amendment, that requirement is uniform across the state. So a local health unit can't require an additional permit for whole uncut fresh fruits and vegetables. The unintended consequence is that retail food stores don't have to use locally grown food. So they are asking the farmer to verify they are an approved source. The farmer wanted a permitting process to show the retail store. If we remove the permitting from the First District Health Unit area, local restaurants may just go out of state and use something FDA regulated because they are looking for that permitting process. A raw agriculture commodity or whole uncut fresh fruits and vegetables are not legislated otherwise. It doesn't require license and inspection under state law.

We had a request to include low acid products with a pressure canner. The health department cannot support that request based on the risk for botulism. We recommend not including that amendment.

Another request was to include dehydrated on page 5, line 15. You can cut or further process fruits and vegetables if you dehydrate them. That was allowed elsewhere but it was reworked to be easier to read and understand on line 24, page 5.

Representative Satrom: You could do dehydrated or freeze dried?

Julie Wagendorf: Yes. There are three items that are excluded.

Representative Richter: Does dehydrated still exclude meat like jerky?

Julie Wagendorf: Correct. Any type of protein would not be included in this bill.

Page 5, line 29 the request was to remove the word “frozen” and replace it with “added temperature of 45 degrees or less.” The Health Department is not recommending that frozen be changed to refrigerated.

Garlic and oil and seed sprouts on page 6, lines 6 & 7 are listed because there is a toxin released. To prevent that from growing refrigeration is required.

Seed sprouts are listed separately. They do require refrigeration for safety. Therefore, we cannot recommend that amendment.

Page 6, number 7 & 8 the request was to strike. Rather than striking both we tried to reword it. There are only three fresh cut fruits and vegetables that require time and temperature control for safety. That is leafy greens, tomatoes, and melons. “Cut” doesn’t include the harvest cut.

Representative McWilliams: What about a half head of cabbage when it is cut at the point of sale?

Julie Wagendorf: The recommendation is once you cut it in half, it requires refrigeration. Cutting increases the risk.

When you cook the other fruits and vegetables, it requires time and temperature because it changes the cell structure. We are allowing blanched and frozen.

The food safety class would be added in a new Section 6. That is not an amendment that the Department of Health recommended. Legislating it is not enforceable as we don’t have appropriations or authority.

Representative Tveit: You are comfortable with the bill as it is in front of us?

Julie Wagendorf: Yes.

Representative Skroch: My concern is you have no controls over the consumer once it has changed hands. That is the same risk once they buy it from the grocery store. There still has to be responsibility taken by the consumer.

Julie Wagendorf: It is everyone's responsibility including the consumer. Sections 3-4 are safe handling instructions to help protect the cottage food producer. The safe handling instructions are for the consumer.

Representative Skroch: If a complaint does come out, how can you prove it is linked to the cottage person?

Julie Wagendorf: If someone were to get sued, it would be the lawyer's job to figure out.

Representative Richter: With festivals in the park, how does this bill affect those events during the summer?

Julie Wagendorf: Community events are covered under Century Code 23-09.2, the Food Preparer Education Act. There is a provision that allows for food to be served at community events. The health department can provide education but waver the license requirement. They are community events that you are not profiting from. They are limited in nature. It is not every day. Cottage food operators might be participating in those events. If they are operating as a business, I would hope they are paying the taxes.

Representative McWilliams: Would you call this bill restricting what is going on currently?

Julie Wagendorf: My opinion of this bill is that the law doesn't work the way it is written. Other "food and drink" has to be defined. It has to be done by rule or by law.

Representative McWilliams: No one has gotten sick from our current law? Doesn't this restrict the growth of the industry?

Julie Wagendorf: I would direct you to page 2 of my testimony. That lists thousands of products that you can make under this cottage food bill. It helps define and clarify what other food and drink products are, which is the goal. North Dakota is probably the second or third most liberal state on what is allowed. It isn't overly restricting.

We have nearly 100 reported cases of salmonella a year. There hasn't been an investigation that links it to a cottage food product.

Public health policy manages risk to prevent it from happening in the first place. Those recommendations are on a national consensus of food safety experts throughout the country.

Representative Headland: Do we know how long it takes for an unrefrigerated kuchen to go bad?

Julie Wagendorf: The cold holding temperature needs to be at 41 degrees or less. The date expires after 7 days from production. That is to protect from listeria.

Representative Headland: If I go to a pie auction and I buy a kuchen that is sitting on a table for four hours, do I have to worry about it?

Julie Wagendorf: Yes. Some of us can handle it. We are concerned about vulnerable populations like a pregnant woman because listeria can cause stillbirth. That is not worth a piece of kuchen.

Representative Skroch: Would you be willing to allow them to keep it at 35 degrees vs. freezing?

Julie Wagendorf: Control for listeria would slow its growth at 38 degrees or below. Even freezing it doesn't stop the growth. Maintaining cold holding temperatures is difficult. Frozen is easy because you can tell that it is froze. You don't have to continue to monitor temperatures.

Representative Skroch: (asked of LeAnn Harner) Do you have concerns with this amendment #.04002?

LeAnn Harner: I like the way fresh uncut whole fruits and vegetables is worded. We haven't had a problem since August of 2017 when this law was put into place. I think the system is working.

I am still concerned about canned food products, low acid with pressure canning. I do believe our people are responsible and can handle the refrigeration part.

With the dairy on page 6, lines 4 & 5, there are a lot of candies made that do not need to be refrigerated. I would hope you would strike "in a baked good."

Representative Skroch: You are alright with frozen custard products?

LeAnn Harner: They should be able to be transported refrigerated. Many live a distance from market, so they have facilities to keep it cold. It is a burden if the customers have to come to them.

Chairman Dennis Johnson: Did we address the candies with dairy?

Julie Wagendorf: We didn't feel it was necessary to address it based on the current definition of baked goods on page 1, line 11, #2 where candies, chocolates, and similar products are included.

Chairman Dennis Johnson: Adjourned.

Erica Smith, Attorney, Institute for Justice: (Attachment #2) not in attendance
Letter sent to Health Department during interim.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2269—Committee Work
4/4/2019 a.m.
Job #34525

- Subcommittee
 Conference Committee

| |
|------------------------------|
| Committee Clerk: ReMae Kuehn |
|------------------------------|

Explanation or reason for introduction of bill/resolution:

Relating to the direct producer to consumer sale of cottage food products

Minutes:

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|---------------|
| Attachment #1 |
|---------------|

Vice Chair Wayne Trottier: Moved to adopt amendment #.04002

Representative Satrom: Seconded the motion.

Representative Headland: Will the amendment #.04004 fit on this bill if #.04002 is adopted?

Representative McWilliams: The amendments would be in conflict.

Julie Wagendorf: Version #.04002 does include cut fruits and vegetables that don't require time and temperature control for safety which is all of them except for cut leafy greens, tomatoes and melons.

Representative McWilliams: Is it correct to say that #.04002 doesn't include low acid food and does not include refrigerated goods?

Julie Wagendorf: It does not include low-acid canned foods. It includes refrigerated baked goods, poultry and eggs, blanched frozen fruits and vegetables except cut leafy greens, tomatoes, and melons.

Representative McWilliams: You can refrigerate a pie and transport it?

Julie Wagendorf: They are transported frozen unless you pick them up yourself.

Representative Headland: If they go pick it up off the table, is that picking it up themselves.

Chairman Dennis Johnson: Depends on where the table is.

Representative Schreiber-Beck: Version #.04004 wants the low-acid food process using a pressure canner. Are there are specifics for licensing low-acid?

Julie Wagendorf: If you are canning a low-acid type of food in a licensed establishment you are not allowed to do special processing methods unless you have permission from the regulatory authority. That includes submitting a hazard analysis and preventive controls plan that is reviewed, approved and audited on a routine basis. Not even licensed food processors or retailers or service operators are allowed to do low-acid canning without additional precautions.

Representative Richter: Refrigeration vs freezing. When we operated a restaurant we could deliver cold food within a certain distance. Could a distance be added to allow refrigeration?

Julie Wagendorf: The provision for frozen for something that requires refrigeration was a control to make the transportation safer. At 41 degrees or less you can prevent bacteria from growing. Freezing isn't a kill step. If bacteria are introduced at the preparation site, freezing won't kill it. Freezing provides more assurances if transported. Time limit is more important than distance.

Representative Skroch: How much education do you provide to the public about listeria?

Julie Wagendorf: The Division of Disease Control has appropriations for regulating the licensed food establishment. We do education of the licensed food operators and employees. We have outreach for general public health and wellbeing with disease control specifically for listeria. Most of that is based on health for pregnant women. The labeling is important. With cottage foods there isn't a label requirement.

Representative Skroch: What if instead of freezing it, just keep it on ice?

Julie Wagendorf: The recommendation on freezing is safer and easier.

Representative McWilliams: Would you agree that currently food is transported all over the state refrigerated?

Julie Wagendorf: Yes. It is within FDA regulations.

Representative McWilliams: You can see ice is frozen and easy to determine.

Julie Wagendorf: Ambient temperature of a cooler and the internal temperature of the food could be different.

A Roll Call vote was taken: Yes 4, No 8, Absent 2.

Motion to adopt version #.04002 failed

Representative McWilliams: I handed out Version #.04004. (Attachment #1)
This amendment allows refrigerated goods and low acid foods with an additional warning label.

This amendment also includes whole uncut and cut fresh fruits and vegetables. This would be the most expansive amendment while keeping to the bill. If this bill doesn't pass and the Health Department tries to make rules, we might be back with the threat of a lawsuit. My suggestion would be to keep it open because we haven't had any problems.

Representative Schreiber-Beck: The Health Department's job is to keep things safe. I rely on the Health Department to provide adequate information. We are not listening to the Health Department.

Representative McWilliams: It is a personal liberty. We allow people to make their own choices. Everyone can assess their own risk.

Representative Skroch: I have pressure canned and don't have worries about it. There are educational programs that teach people to use it correctly. Adopting this amendment will allow the ability to pass on the floor.

Representative Satrom: If we have prudent laws in place, we are protecting the cottage food industry. I think this is irresponsible and a cause for concern.

Representative Schreiber-Beck: If we each have a share in the liability for the state if there was an issue, we might view this differently.

Representative Skroch: Can we reject portions of this amendment?

Representative McWilliams: I would like the full amendment because it keeps it close to what we have now. It is slightly less restrictive with labeling requirements and with some clarifications on definitions the Health Department was looking for. This gives an extra label.

Chairman Dennis Johnson: Do we allow for low acid foods to be canned now.

Julie Wagendorf: SB 2269 does not allow for low acid canned foods. It is defined on page 2, line 14. None of the other 49 states allow low acid canned foods.

Representative McWilliams: Does our current law allow the canning of low acid foods?

Julie Wagendorf: No. It does not. It depends on the intent of "other food and drink."

Representative McWilliams: Moved to adopt amendment version #.04005

Representative Skroch: Seconded the motion.

A Roll Call vote was taken: Yes 7, No 5, Absent 2.

Motion to adopt amendment version #.04005 passed.

Representative Dobervich: On page 7, lines 19 & 20, there is a requirement for labeling. I would like to include language that you see in restaurants that raw food can cause illness and death.

Representative McWilliams: I would agree with that.

Representative Skroch: After botulism insert “and may potentially cause illness or death.”

Representative Schreiber-Beck: “Which could cause. . .”

Representative Satrom: Does this pose an additional risk to pregnant women?

Representative Skroch: When you are talking about illness or death that would be inclusive of a fetus or child.

Representative Dobervich: Is there an increased risk to pregnant women, children, elderly?

Julie Wagendorf: Botulism is one of the deadliest toxins in the world. It doesn't matter who you are. The other microorganisms are a risk for pregnant, children, and elderly. If it is sealed with no oxygen, that kills organisms.

Representative Skroch: The number of cases of botulism is almost zero. Is that due to different methods of processing?

Kirby Kruger, Director of Division of Disease Control, North Dakota Department of Health: Botulism is low. The last case was back in 1999. Then it was 1982. Then in 1931 twelve people died in Grafton.

Representative McWilliams: Is there an industry standard warning label?

Kirby Kruger: We do investigations so I don't have an answer about regulations.

Representative Headland: Would you make a risk assessment of this bill?

Kirby Kruger: We are dealing with a powerful bacterial toxin that causes severe illness. The risk of multiple cases from a bad batch increases and it is 100% preventable. Having measures in place for low acid food is important.

Representative Schreiber-Beck: What is the liability of the state?

Tara Brandner, Assistant Attorney General, General Counsel for the Department of Health: My concern with the amendments as written is the allowance of low acid food and the requirement that the Department of Health put the individuals through a training course and offer certification makes it appear the department has blessed this. It is a significant health concern. The department does not want to be entangled in any lawsuits between a producer and a consumer. My concern is if it goes forward with the certification or the department having any regulatory authority within its confines, they are going to be attached to a lawsuit.

Representative McWilliams: On page 4, section 6 “shall offer a free online food safety course. This bill doesn’t mandate the taking of the course.

Tara Brandner: It says “shall.” How is the class going to be paid for? If a certificate is provided, it means they possess the skills to do this without the risk. The view from the public is going to be that the Department of Health has blessed this activity. The way the bill is written you are requiring the department to authorize this.

Representative McWilliams: So if we remove the food safety class section in Section 6, would it remove the liability to the state??

Tara Brandner: I can’t say whether or not the state would be in a law suit. Litigation is expensive. In order for the Department of Health to get itself out of the case, we would have to go forward with litigation which would cost money. Whether it is successful or not there is still a cost to the taxpayer.

Representative McWilliams: That could be true with any law.

Tara Brandner: Whether or not the bill goes forward or whether this amendment is passed, there is a very real chance that the Department of Health could be sued because of any actions that occur under this law.

Representative Dobervich: On page 7, lines 19 and 20 is about low acid canned foods. If a label were to read “improperly canned low acid food carries a risk of botulism, listeria, salmonella, and E. coli which can cause severe illness and death. Consumer assumes associated risks.” Does that place the responsibility on the consumer?

Tara Brandner: The liability for the cottage food operator would be limited. I still think there is a chance an individual injured could bring a law suit and be successful.

Representative Schreiber-Beck: I would like to propose that all cottage food industry people have to have insurance.

Chairman Dennis Johnson: Bring the above ideas for an amendment on paper.
Recess until after session.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2269—Committee Work
4/4/2019 p.m.
Job #34544

- Subcommittee
 Conference Committee

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| Committee Clerk: ReMae Kuehn |
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Explanation or reason for introduction of bill/resolution:

Relating to the direct producer to consumer sale of cottage food products

Minutes:

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| Attachment #1 |
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Representative Richter: It needs to be frozen to comply with time and temperature. Everything else was on version #.04005.

Representative Schreiber-Beck: How about sale vs. delivery?

Representative Richter: If it is less than 4 hours it still has to be maintained cold. More than 4 hours to delivery, it has to be frozen.

Representative Schreiber-Beck: You are only concerned about the transport. How about the sale?

Representative Richter: Delivery means it is no longer in my possession.

Representative Dobervich: Amendment (Attachment #1) page 7, line 19

Representative Schreiber-Beck: Amendment (Attachment #1) page 7, line 31 add Section 6 for insurance.

Representative McWilliams: Moved amendment by Representative Dobervich for page 7, line 19.

Representative Skroch: Seconded the motion.

Voice Vote. Amendment to page 7, line 19 passed.

Representative Schreiber-Beck: Moved to add Section 6 for insurance.

Representative Satrom: Seconded the motion.

Representative McWilliams: I will resist this motion. That would require insurance for someone who sells a baked good out of their house a couple times a year. Could we put an amount in for example if they sell more than \$5,000 a year?

Representative Headland: We are not requiring a license for a cottage operator. How are we going to know who is a cottage operator?

Representative Schreiber-Beck: It would be like your vehicle insurance. If you get stopped, they will ask for your insurance.

Representative Skroch: Do we even have a company that would provide the insurance?

Representative Satrom: If the unthinkable happens, they can avoid bankruptcy. If the risks are low, the insurance should be low also. Seems like we are doing them a favor.

Representative Schreiber-Beck: The insurance is available for around \$300.

A Roll Call vote was taken: Yes 6, No 7, Absent 1.

Motion to add Section 6 failed.

Representative Richter: I move to amend page 5, line 23 of the original bill.
“except for washed egg shells if a period of four hours or more occurs between transportation by the cottage food operator and delivery must be maintained frozen by the cottage food operator.”

The intent is to leave eggs out so they are not included with frozen

Representative Skroch: This amendment wouldn't affect #3, subsection a. at all. It is only affecting subsection b. Subsection a. stays and Representative Richter's language would replace subsection b.

Representative Dobervich: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 2.

Motion to amend page 5, line 23 passes.

Representative Schreiber-Beck: Moved to remove Section 6 of page 8, lines 1-6 of version #.04005. This is the food safety class.

Representative McWilliams: Seconded the motion

A Roll Call vote was taken: Yes 12, No 0, Absent 2.

Motion to remove Section 6 passes.

Representative McWilliams: Moved Do Pass as amended.

Representative Dobervich: Seconded the motion

A Roll Call vote was taken: Yes 7, No 5, Absent 2.

Do Pass as amended carries.

Representative McWilliams will carry the bill.

March 28, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after "8." insert ""Food" means an article used for food or drink for human consumption, including an article used for a component of food or drink for human consumption.

9."

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 15, after "products" insert "are dehydrated, are freeze dried, or"

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, remove "by the cottage food operator"

Page 5, line 28, remove "Cut leafy greens, except for leafy greens grown and dehydrated or blanched and"

Page 5, remove line 29

Page 5, line 30, remove "8."

Page 5, line 30, remove "or cooked"

Page 5, line 31, remove "and are dehydrated by or blanched and frozen by"

Page 6, line 1, after "operator" insert "and do not require time and temperature control for safety or are blanched and frozen"

Page 6, line 1, after "include" insert "a"

Page 6, line 1, after "fresh" insert "leafy green,"

Page 6, line 1, after "tomato" insert an underscored comma

Page 6, line 1, remove the underscored comma

Page 6, line 2, remove "dehydrated tomato or melon, or blanched and frozen cut melon"

Page 6, line 3, replace "9." with "8."

Page 6, line 4, replace "10." with "9."

Page 6, line 5, replace "11." with "10."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

Page 1, line 1, replace "three" with "four"

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after "8." insert "Food" means an article used for food or drink for human consumption.

9."

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 14, remove "or"

Page 5, line 15, after "products" insert "are dehydrated or are freeze dried and the products"

Page 5, line 15, after "level" insert: ":

c. The products are blanched and frozen; or

d. The products are low-acid foods processed using a pressure canner"

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 25, remove "in a baked good"

Page 5, line 26, remove "Garlic in oil."

Page 5, remove lines 27 through 31

Page 6, remove lines 1 and 2

Page 6, line 3, remove "9."

Page 6, line 4, replace "10." with "6."

Page 6, line 5, replace "11." with "7."

Page 6, line 24, after "Handled" insert "Refrigerated or"

Page 7, line 1, after "4." insert "If the cottage food is a low-acid food, the label required under this section must:

- a. Be printed on a high visibility color background;
- b. Include the phrase "low-acid food" in bold capital letters; and
- c. Contain the following language: "Improperly canned low-acid food carries a risk of botulism".

5."

Page 7, after line 4, insert:

"6. The state department of health shall publish a list of high-acid foods that do not require special labeling under this section as a low-acid food."

Page 7, after line 9, insert:

"SECTION 6. A new section to chapter 23-09.5 of the North Dakota Century Code is created and enacted as follows:

Food safety class.

The state department of health shall offer a free online food safety course for cottage food operators. Upon satisfactory completion of this course, the department shall issue to the cottage food operator a certificate of completion."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

Page 7, line 19, after "food" insert "increases your risk of developing foodborne illnesses including botulism or death."

Page 7, after line 31, insert:

"SECTION 6. A new section to chapter 23-09.5 of the North Dakota Century Code is created and enacted as follows:

Insurance

A cottage food operator must carry liability insurance, and proof of insurance must be provided upon request.

Page 8, remove lines 1 through 6.

DP 4/9/19
1082

April 4, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after the underscored period insert: ""Food" means an article used for food or drink for human consumption.

9.

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 14, remove "or"

Page 5, line 15, after "products" insert "are dehydrated or are freeze dried and the products"

Page 5, line 15, after "level" insert: ":

c. The products are blanched and frozen; or

d. The products are low-acid foods processed using a pressure canner"

Page 5, line 19, after "chapter" insert "must be labeled in accordance with the requirements of this chapter and"

Page 5, line 20, replace "If" with "Except as provided under subdivision b, if"

Page 5, line 20, after "transported" insert "by the cottage food operator"

DP 8/4/19
2.02

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 22, replace "and" with "or"

Page 5, line 23, replace "Must be labeled in accordance with the requirements of this chapter" with "Except for washed shell eggs, if a period of four hours or more occurs between transportation by the cottage food operator and delivery, must be maintained frozen by the cottage food operator"

Page 5, line 25, remove "in a baked good"

Page 5, line 26, remove "Garlic in oil."

Page 5, remove lines 27 through 31

Page 6, remove lines 1 and 2

Page 6, line 3, remove "9."

Page 6, line 4, replace "10." with "6."

Page 6, line 5, replace "11." with "7."

Page 6, line 24, after "Handled" insert "Refrigerated or"

Page 7, line 1, after the underscored period insert: "If the cottage food is a low-acid food, the label required under this section must:

- a. Be printed on a high visibility color background;
- b. Include the phrase "low-acid food" in bold capital letters; and
- c. Contain the following language: "Improperly canned low-acid food increases your risk of developing foodborne illnesses including botulism or death".

5."

Page 7, after line 4, insert:

"6. The state department of health shall publish a list of high-acid foods that do not require special labeling under this section as a low-acid food."

Renumber accordingly

Date: 4/4/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.0887.04002

Recommendation

- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar
- Other Actions:** Reconsider _____

Motion Made By Rep. Trottier Seconded By Rep. Satrom

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|------------|-----------|-------------------------|------------|-----------|
| Chairman Dennis Johnson | X | | Rep. Ruth Buffalo | | X |
| Vice Chairman Wayne Trottier | X | | Rep. Gretchen Dobervich | | X |
| Rep. Jake Blum | AB | | | | |
| Rep. Jay Fisher | | X | | | |
| Rep. Craig Headland | AB | | | | |
| Rep. Dwight Kiefert | | X | | | |
| Rep. Aaron McWilliams | | X | | | |
| Rep. David Richter | | X | | | |
| Rep. Bernie Satrom | X | | | | |
| Rep. Cynthia Schreiber Beck | X | | | | |
| Rep. Kathy Skroch | | X | | | |
| Rep. Bill Tveit | | X | | | |

Total **Yes** 4 **No** 8

Absent 2

Floor Assignment _____ **Motion Failed**

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.0887.04005

Recommendation

- : Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. McWilliams Seconded By Rep. Skroch

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Dennis Johnson | | X | Rep. Ruth Buffalo | | X |
| Vice Chairman Wayne Trottier | | X | Rep. Gretchen Dobervich | X | |
| Rep. Jake Blum | AB | | | | |
| Rep. Jay Fisher | X | | | | |
| Rep. Craig Headland | X | | | | |
| Rep. Dwight Kiefert | X | | | | |
| Rep. Aaron McWilliams | X | | | | |
| Rep. David Richter | X | | | | |
| Rep. Bernie Satrom | | X | | | |
| Rep. Cynthia Schreiber Beck | | X | | | |
| Rep. Kathy Skroch | X | | | | |
| Rep. Bill Tveit | AB | | | | |

Total **Yes** 7 **No** 5

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: Amend p. 7, line 19 to include botulism or death

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. McWilliams Seconded By Rep. Skroch

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------------------------|-----|----|
| Chairman Dennis Johnson | | | Rep. Ruth Buffalo | | |
| Vice Chairman Wayne Trottier | | | Rep. Gretchen Dobervich | | |
| Rep. Jake Blum | | | | | |
| Rep. Jay Fisher | | | | | |
| Rep. Craig Headland | | | | | |
| Rep. Dwight Kiefert | | | | | |
| Rep. Aaron McWilliams | | | | | |
| Rep. David Richter | | | Voice Vote Motion Passed | | |
| Rep. Bernie Satrom | | | | | |
| Rep. Cynthia Schreiber Beck | | | | | |
| Rep. Kathy Skroch | | | | | |
| Rep. Bill Tveit | | | | | |

Total **Yes** _____ **No** _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: Amend to add Section 6 for insurance

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Schreiber Beck Seconded By Rep. Satrom

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Dennis Johnson | X | | Rep. Ruth Buffalo | X | |
| Vice Chairman Wayne Trottier | | X | Rep. Gretchen Dobervich | X | |
| Rep. Jake Blum | X | | | | |
| Rep. Jay Fisher | | X | | | |
| Rep. Craig Headland | | X | | | |
| Rep. Dwight Kiefert | | X | | | |
| Rep. Aaron McWilliams | | X | | | |
| Rep. David Richter | | X | | | |
| Rep. Bernie Satrom | X | | | | |
| Rep. Cynthia Schreiber Beck | X | | | | |
| Rep. Kathy Skroch | | X | | | |
| Rep. Bill Tveit | AB | | | | |

Total **Yes** 6 **No** 7

Absent 1

Floor Assignment _____ **Motion Failed**

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: Amend page 5, line 23 except washed egg shells (original bill)

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Richter Seconded By Rep. Dobervich

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Dennis Johnson | X | | Rep. Ruth Buffalo | X | |
| Vice Chairman Wayne Trottier | X | | Rep. Gretchen Dobervich | X | |
| Rep. Jake Blum | X | | | | |
| Rep. Jay Fisher | X | | | | |
| Rep. Craig Headland | AB | | | | |
| Rep. Dwight Kiefert | X | | | | |
| Rep. Aaron McWilliams | X | | | | |
| Rep. David Richter | X | | | | |
| Rep. Bernie Satrom | X | | | | |
| Rep. Cynthia Schreiber Beck | X | | | | |
| Rep. Kathy Skroch | X | | | | |
| Rep. Bill Tveit | AB | | | | |

Total **Yes** 12 **No** 0

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: Amend Version #.04005 to remove Section 6, p. 8, lines 1-6
Food Safety Class

Recommendation

- : Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Schreiber Beck Seconded By Rep. McWilliams

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|------------|-----------|-------------------------|------------|-----------|
| Chairman Dennis Johnson | X | | Rep. Ruth Buffalo | X | |
| Vice Chairman Wayne Trottier | X | | Rep. Gretchen Dobervich | X | |
| Rep. Jake Blum | X | | | | |
| Rep. Jay Fisher | X | | | | |
| Rep. Craig Headland | AB | | | | |
| Rep. Dwight Kiefert | X | | | | |
| Rep. Aaron McWilliams | X | | | | |
| Rep. David Richter | X | | | | |
| Rep. Bernie Satrom | X | | | | |
| Rep. Cynthia Schreiber Beck | X | | | | |
| Rep. Kathy Skroch | X | | | | |
| Rep. Bill Tveit | AB | | | | |

Total **Yes** 12 **No** 0

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2269**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.0887.0400:7

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. McWilliams Seconded By Rep. Dobervich

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Dennis Johnson | | X | Rep. Ruth Buffalo | | X |
| Vice Chairman Wayne Trottier | | X | Rep. Gretchen Dobervich | X | |
| Rep. Jake Blum | X | | | | |
| Rep. Jay Fisher | X | | | | |
| Rep. Craig Headland | AB | | | | |
| Rep. Dwight Kiefert | X | | | | |
| Rep. Aaron McWilliams | X | | | | |
| Rep. David Richter | X | | | | |
| Rep. Bernie Satrom | | X | | | |
| Rep. Cynthia Schreiber Beck | | X | | | |
| Rep. Kathy Skroch | X | | | | |
| Rep. Bill Tveit | AB | | | | |

Total **Yes** 7 **No** 5

Absent 2

Floor Assignment Rep. McWilliams

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2269, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2269 was placed on the Sixth order on the calendar.

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after the underscored period insert: "Food" means an article used for food or drink for human consumption.

9.

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 14, remove "or"

Page 5, line 15, after "products" insert "are dehydrated or are freeze dried and the products"

Page 5, line 15, after "level" insert: ";

c. The products are blanched and frozen; or

d. The products are low-acid foods processed using a pressure canner"

Page 5, line 19, after "chapter" insert "must be labeled in accordance with the requirements of this chapter and"

Page 5, line 20, replace "If" with "Except as provided under subdivision b, if"

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 22, replace "and" with "or"

Page 5, line 23, replace "Must be labeled in accordance with the requirements of this chapter" with "Except for washed shell eggs, if a period of four hours or more occurs between transportation by the cottage food operator and delivery, must be maintained frozen by the cottage food operator"

Page 5, line 25, remove "in a baked good"

Page 5, line 26, remove "Garlic in oil."

Page 5, remove lines 27 through 31

Page 6, remove lines 1 and 2

Page 6, line 3, remove "9."

Page 6, line 4, replace "10." with "6."

Page 6, line 5, replace "11." with "7."

Page 6, line 24, after "Handled" insert "Refrigerated or"

Page 7, line 1, after the underscored period insert: "If the cottage food is a low-acid food, the label required under this section must:

- a. Be printed on a high visibility color background;
- b. Include the phrase "low-acid food" in bold capital letters; and
- c. Contain the following language: "Improperly canned low-acid food increases your risk of developing foodborne illnesses including botulism or death".

5.

Page 7, after line 4, insert:

- "6. The state department of health shall publish a list of high-acid foods that do not require special labeling under this section as a low-acid food."

Renumber accordingly

2019 CONFERENCE COMMITTEE

SB 2269

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
4/16/2019
JOB # 34767

- Subcommittee
 Conference Committee

| |
|---------------------------------|
| Committee Clerk: Florence Mayer |
|---------------------------------|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota Century Code, relating to cottage food production and sale; and to amend and reenact sections 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

| |
|---------------|
| Attachment #1 |
|---------------|

Vice Chair Myrdal: Opened the conference committee on SB 2269. Roll call was taken, all members were present. The committee consisted of Senators Myrdal, Larsen and Klein; Representatives McWilliams, Satrom and Skroch.

Thank you everyone for being here. Quick ground rules for me, we won't take any further testimony, opinion or input from the public on this. If there are neutral experts that need to answer any of the legal stuff with language, we will make that judgement if we need that. We have some concerns on the Senate side on the bill we sent to you. Let's talk over those differences before we take any action. If you want to talk shortly about the differences, you made and why please do.

Representative Aaron McWilliams: In the House version of SB 2269 we added back in low acid foods and required a special warning label for it. We also added back in refrigerated goods and added a provision that it can only be transported up to 4 hours being refrigerated. It can't just sit in your car for 24 hours and then take it there. We put some restrictions on there. We heard from the health department that as the window gets longer the risk of food borne illness goes up. We capped that at 4 hours to be transported. Some of the amendments we added in came from the Health Department. Such as the definition of food, meaning an article used for food or drink for human consumption. That was one of the concerns brought up on the House side that the other version had overstruck drink on .05 on line 23 page 1. We had a concern that cottage food products when we overstrike drink, that there are some producers currently producing drinks. We had concerns there. The health department also offered an amendment to define food that includes both food and drink. That is the jest of what we have done. There are a couple other corrections and definitions here and there. We clarified you can sell cut fruits and vegetables. The main difference is low acid and refrigerated goods.

Vice Chair Myrdal: From the Senate side, we did not concur on the low acid. We will not concur on that. We feel it is for public safety and it is not a wise move to put in there. The refrigeration I think is okay, the 4 hours is difficult to police, but we are okay with that. It has to stay below 40 degrees as well. It becomes the responsibility of the producer to make sure there is honesty and integrity in that process. I don't think we're going to have a fiscal note with 20 new police officers to time you as you drive. The cut vegetables and fruits are a concern to us as well. We have had too many scares. We have a situation going on right now with melons being recalled. There was a severe one last fall too with those issues nationally. That is where we stand on the issue.

Representative Kathy Skroch: On the comment on the cut melons, were they from a cottage food producer?

Vice Chair Myrdal: I don't think that matters whether it is from a cottage food producer or not. I think if you start differentiating between the two, if it is certain fruits or vegetables that are cut wrong or not cleaned right, it gets to be a health issue for the public. I don't think it really matters. Personally, I wouldn't say I trust the cottage food industry more than I trust the grocery store. The fact that those are a concern to the health department and public safety, it is our committees concern.

Senator Klein: I would agree with just about everything you said. The low acid issue is something we worked over and over again. We had a lot of resolve that was one of the compromises as we continued to move and add a lot of the other things back in. The cut thing, we could argue that nationally if there is an issue. Last year it was cut romaine that created issues. The refrigeration thing could work, I don't know about the hours issue. At some point if your food is tested and it is above 40 degrees, I don't know what happens or if it gets thrown out. Does it matter if it's 90 degrees and in the back of the pickup, where is that level? I think there is some give there. I still believe the low acid issue is going to be one we really look at. I've been working on this since last September. I have a personal story about growing up and my high school classmate's mother canned all the time. Her green beans took her out of this life. I remember that clear as day. Now Gary's mom is passed away because of green beans. In today's society we are all looking for fresh. Green beans will be more popular at the farmers market fresh than canned anyway. I don't think we are hindering the cottage food industry by not allowing that. That is where I'm at.

Senator Larsen: For clarification, before this bill, could the cottage food industry cut vegetables? Prior to this? So if this bill moves forward they won't be able to cut them?

Vice Chair Myrdal: No, it was whole fruits and vegetables. There was some discussion in our committee on certain kinds of lettuce and aren't they cut, we clarified that.

Representative McWilliams: To address that last question. I had heard questions on whether they could or not. There were a few that did, but a number of them didn't because they didn't know if they would have a fowl of the law that we had passed in the 65th legislative session. One thing we took upon ourselves over the last week was to figure out how big the market is, so we can put it into perspective. I don't like passing regulations and not knowing who is all affected by this. Handed out **Attachment #1**, titled Cottage Food Industry

Overview. It shows exactly what the impact is of low acid foods. The best estimate we can have after conducting a survey through farmer's markets and many other producers is that there is an estimated sale of about \$100,000 in low acid foods currently. That represents the ability to be able to extend the line and the season. If you're selling fresh fruits and vegetables at a farmers market and you're coming to the end of the season, you're running out of time. Being able to can those products extends those product lines for you. Many people who are cottage food producers usually make only \$36,000 a year. These are typically low-income, rural families. They are typically run by women. 83% of cottage food producers are women. When you do the math on this, you can see that they are selling about \$2,000 of low acid food. If you take away \$2,000 from only \$36,000. That is a significant impact. It looks like there are only 50 people selling these low acid foods. But for those 50 people selling low acid foods, that no one has gotten hurt, there hasn't being any problem. Wyoming has been doing this for 3 years with no problem. You are impacting, if you take an average family size, you're impacting 150 people's livelihood and how they live by taking this out. Whatever we decide to do here has a real world consequence to those families and their livelihood in our districts.

Vice Chair Myrdal: There is no doubt on both sides we understand the cottage food industry, the amount and how important it is. I am speaking for me personally, whether this is the cottage food industry or the equine industry, there is scientific data that shows us somethings are dangerous and some things are not good for the health of the common good for ND citizens. I don't think that is the question here. What does science tell us? What is healthy? I think it is incumbent on us as legislators to look out for all North Dakotans, especially when it comes to edibles. Maybe that is a lot of money, but when someone passes away from low acid food or botulism, that money is gone in a heartbeat. I respectfully beg to differ, we all want to promote the cottage food industry, but I also want to make sure that the liability of the cottage food industry is protected here too.

Representative Bernie Satrom: I think philosophically most of us are for the cottage food industry. I have real heartburn about low acid foods. My thought about extending the season, isn't it possible a person could blanch and freeze to sell a frozen product? Would that be a safe way to handle this? Frozen is far superior to something canned anyway. You have the ability to not cook it and cook it. \$100,000 estimated volume of low acid foods, I can't even imagine how much it would cost if someone goes into a coma or something happens. What is the impact of the people selling and also the people buying. You could potentially financially ruin both of them. I think that is careless. I am negotiable on the rest of it, but that one I can't go for.

Senator Larsen: They can still sell it, it just has to be metered correct?

Vice Chair Myrdal: No.

Senator Larsen: They can't sell it at all then? It says if you do it has to be tested.

Vice Chair Myrdal: In the House version that is the debate we have.

Senator Larsen: But you have to test it? That is what this says here. Page 5 line 23, it says you have to use a calibrated meter. Am I mistaken on this or do they have to test it?

Representative McWilliams: Section 2 page 5 of the House version?

Senator Larsen: Correct, line 23 where it has to be verified using a meter.

Representative McWilliams: That is when we're talking about high acid foods. If you're over or under a certain P.H. it qualifies as high or low acid. Low acid foods fall below a certain P.H. level. It's saying your canned foods need to be tested and if they fall below that level, then turn the page. We are mandating on page 7 #4, if the cottage food is a low acid food a label is required under the section must be printed in high visibility color background. Include the phrase low acid food in bold, capital letters. It must contain the language improperly canned low acid food increases your risk of developing foodborne illness include botulism or death. Our intention here is that we are allowing people to still make their own decisions. We could say jumping out of an airplane is inherently dangerous, especially when the parachute doesn't open. We don't make a law saying you can't jump out of airplanes. I understand there are further analogies that say, it depends on who is packing the parachute. If you have that relationship and trust with the person packing the parachute, then you can make that risk. The risk is taken upon the person in taking that action. If our argument here is that, well we had problems with sliced greens and melons; these are all commercially produced products. If there is an inherent risk there, why are we not advocating for a law to restrict the sale of all sliced fruits and vegetables in the whole state?

Vice Chair Myrdal: Because they are licensed and inspected.

Representative McWilliams: Expect we are still having problems. If the argument is we have problems and it is an inherent risk, just because they are licensed already proves it isn't inherently safe. The argument falls apart. We should just ban it all if there's risk there.

Representative Skroch: Just want to respond to a couple concerns. I think we have a different level of responsibility when we're talking about canning low acid foods for my own personal interest and use; versus from a producer that intends to sell. People going into this aspect of food production take special courses, food safety courses, they go online and find canning techniques. When you use a pressure canner you significantly remove the risk of botulism, especially with green beans. I wouldn't eat green beans if they are not processed through pressure canning. Why would we want to use canning versus frozen? Because you extend the shelf life far beyond that of a frozen product. If the freezer fails, you lose those goods. If you have it on the shelf in a jar, properly labeled. You have a relationship with that person; you trust that person and their labeling to be correct. I think we owe it to people to be able to make those decisions in purchasing these products. There may be risk in the licensing world and the cottage food world. I think we should allow people to make those decisions and accept that responsibility.

Representative Satrom: I have issues with the previous statements. When you want to jump out of the airplane, you have to have someone certified to pack the chute. You can't get into any airplane, you have to have one certified where you can the door opened. Then you have to have a pilot. I am a private pilot, but I am not a commercial pilot. I wouldn't be qualified to do it. Now keep in mind the airplane has to be inspected every so many hours, which has to be done by someone certified. There are lots and lots of regulations. I think comparing the cottage industry and dole pineapple is not a good comparison. They provide hundreds of

millions of servings of foods every day. Even with all their precautions of doing everything perfectly, there is still a potential risk, which just highlights the point. What they do for their own family is not a problem. A lot of these people, it is not their personal responsibility. Ultimately, a lot of these people are not insured. We do not have an insurance component in this. They may say well it's my personal responsibility. Well guess what North Dakota gets to pick up the bill if something happens. It is ND states responsibility, not your personal responsibility. If there was a way they could financially insure themselves and the state would have no responsibility in any fashion, then I would have a different opinion, but I don't.

Vice Chair Myrdal: I think the low acid food thing is a no compromise from our side of the table. As we go forward, I think we can discuss those issues all day long, we won't agree. "We know who we buy from and we trust them" is an argument that doesn't fit into Century Code. We literally can't make out decisions based on vague language. We are dealing with what is the best for public safety for the consumer in North Dakota. We all support the best practices to protect the cottage food industry from the liability issues. Scientifically, on the low acid issue, it is pretty clear. For me personally, when they were in this committee they didn't want any labeling. In the House, they want a label that says if you eat this, you could die. It doesn't make any sense to me.

Representative McWilliams: If you reference the sheet we have, about 60% of cottage food producers currently carry liability insurance. Many of the farmer's markets do require it. When you dig into the data we received, about 75% of those selling low acid foods, already carry that insurance. The one concession I think we would be willing to make, is that if you're selling low acid foods you must carry liability insurance. I think that would impact the lowest about of people in the industry, and still provide some of the projections.

Vice Chair Myrdal: Where is this fact sheet from?

Representative McWilliams: Me. This is based on surveys done over the weekend with 50 farmers markets and producers. We asked a list of questions and asked what percentage of the sales are coming from low acid foods, what is the overall foods, how's your industry grown, etc.

Vice Chair Myrdal: So it is basically a "here say" from the cottage food producers?

Representative McWilliams: Any survey is based on their information, unless its going through tax information.

Senator Klein: I've been working on this for a few years now. The whole idea was to create consistency and conformity between farmers markets. They were never the same rules from one to the next. We need to work through the rough spots and compromise. The whole idea has been to develop some consistency. What we had was a product that was workable. I would suggest what we have done is good work. If we have folks next session of folks that are just clamoring to add low acid, that would be an opportunity to do that. I know the labeling issue is something people believe is important. I just don't think that we should put botulism or death out there. I don't think that resounds with the public when they see the sign. I am giving my 10,000-mile look. It has been a long journey and we have come a long way. We are within miles of the end. There are a couple things I think are important.

Representative McWilliams: I think it is important to keep in mind; currently low acid foods are being produced and are part of the market right now. It think if we try to pass something out that does not have low acid foods or refrigerated goods, it has a great chance of failing in the House. That means we revert back to the law we currently have, which allows for low acid foods.

Vice Chair Myrdal: Which means the Health department will do administrative rules, which your side of the view didn't want.

Representative McWilliams: Respectfully, would open them up to lawsuits.

Vice Chair Myrdal: As could this labeling. It think our job here is to come to a compromise. The refrigeration thing the Senate is willing to compromise. We would expect some compromise from your side on the acid foods. We will meet again, hopefully not more than 1 or 2 meetings. We will recess for now.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
4/16/2019
JOB # 34788

Subcommittee
 Conference Committee

| |
|---------------------------------|
| Committee Clerk: Florence Mayer |
|---------------------------------|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota Century Code, relating to cottage food production and sale; and to amend and reenact sections 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

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|-------|
| None. |
|-------|

Vice Chair Myrdal: Called the conference committee on SB 2269 back to order. All members were present.

I know it is quick to come back the same day, but we are aiming at going home. The quicker we can work across the aisle on where to meet on this, the better. I know people have been talking in the hallway since we met a few hours ago. One comment I just wanted to bring back, there was some conversation earlier about low acid foods and that they were available to sell before. I don't think that is correct. I think they were not available to be sold under former code. That seems to be the #1 issue. I know the Senate is pretty strong on not including that in the final product. Also, I think the cut vegetables and fruits are a concern to us as well. Like I said earlier on, as far as the refrigeration and traveling, we can live with that. We need to find a way to conference on the particular issues we are looking at and go forward from there. If anyone has any input difference from this morning, I would appreciate it.

Senator Larsen: I printed out the chapter 23-09.5 about cottage food production and sales. I can't see anywhere in here where low acid foods are illegal. I am wonder if it is just the guidelines of the health department saying they won't accept it. Unless there is more to this chapter to where it would state that. I couldn't find that. I am still confused on that. If this bill dies, they would be able to do that. I see the jams and jellies part, but I was still confused.

Representative McWilliams: Currently, there are cottage food producers selling low acid foods. When we passed the bill out in the 65th Legislative Session, it was not precluded to sell low acid foods. As of right now, the health department still has not made rules on it. The previous bill precludes them from doing so.

Vice Chair Myrdal: When we passed that bill there were ambiguities in it, which is why we are revisiting it today and this session. The health department was ready to apply those administrative rules, but were stopped due to threats of lawsuit. That is why we are revisiting this in century code instead of under administrative rules.

Senator Klein: As with any law, we don't want to put all of this in the code. That is what the concern or discussion was. The health department will prorogate rules and during the interim, like we do with everything else, then they come before the administrative rules committee. We all know there was lots of resistance and that is why today we are putting in the century code, language detailing each and every issue. Now every time we want to change it, we will come to the legislature to talk about this, rather than working through rules that the health department has traditionally always created. That is why we are here and what was supposed to happen. In the September administrative rules committee when the health department had not provided the rules, they were chastised a bit by the chairman because that is their job to make rules no matter what. It was already September of 2018 and session was around the corner. I seemed to have been volunteered to help with providing and getting these rules. We are having a discussion among everyone as to what the rules should be. That is why we are creating this discussion and hoping to create the clarity. When we go home, the rules will be in the century code. If the bill fails, then they would have to go back, make rules, go through the whole process, have the hearings, and go through the rules committee. Then whatever they decide, the Attorney General will defend us if we as a legislature decide that this is what the rules are and this is how we want to go ahead, that is how it's going to work. It seems simple when you're looking at just the one page.

Representative Skroch: I think the way many understood the original bill was that it was the intent the health department would not be given permission to write additional rules beyond the original bill. I think that is why there was the push back; I'm just saying that, this is why there was pushback, because that understanding was out there. This was going to allow them the freedom, which is part of the intent of this bill, is to be able to produce these products without intensive regulation or over regulation, if you wish you say it that way. I think that is why that reaction resulted.

Representative Satrom: I was on the Agriculture committee last time and low acid foods were not on the radar. That was not at all on the radar and it was not intended, in my opinion. I think things were being pushed a little farther than legislative intent. That is my analysis of it. That is why I am concerned. I voted for it last time in committee and I voted for it on the floor. Low acid is a great concern to me. A lot of stuff negotiable on that one will kill you. I have a problem with that one.

Vice Chair Myrdal: I appreciate that. I will be honest, I think we worked really hard on this last session and I am a little frustrated by the social media. That those who worked on this are "Anti-cottage food", you get all this feedback like we are not working together. I am a little frustrated about that too. If this bill dies, the health department will write administrative rules. They may not be as permissive as what even came from the Senate side and what we are willing to negotiate on here. We worked closely with a lot of input from them and others on this. The 6 of us are here to come to some kind of conclusion. If we can't come to an agreement, then so be it. No one here is attempting not to have freedom or liberty for the cottage food industry. Speaking for myself and in working with other members, we are

charged with protecting the well being of 760,000 people too. I don't take that lightly. When it comes to the low acid and the cut fruits and vegetables, I am deeply concerned.

Representative McWilliams: I was on that committee too last session. I provided the amendment to take raw milk out of the original bill, which was able to give it some legs so we could pass it. I called to my former committee members and I took a statement from all of them trying to figure out what our legislative intent in the House was. I had also spoken to Oley at that time. Our intent was to try to leave it as open as possible, at least the majority of the House Agriculture committee. Those were statements I gathered. Yes, we are charged with the wellbeing of people, but also to protect the freedom and liberty of people too. To allow them to make their own decisions and to curtail the growth of government in those areas. I think this bill really highlights a fundamental difference in philosophy of what is the role of government in our lives. I look at the role of government as being able to provide that structure, but it is my job to protect the liberties of people and allow them to make their own choices. I have no problem killing this bill, letting it die, and allow freedom to reign. If people want to buy low acid foods, you have a 1 in 5 billion chance, according to our own state health department's statistics. You have to do the calculations of being hurt or getting sick from canned food. You are 5 times more likely, statistically; to be struck by lightning then you are to get ill from canned foods. Just statistically.

Representative Satrom: I've got an issue with your statistics. Most of the food eaten in the example earlier, most of those examples are cases of commercially canned foods. I don't think most of us eat home canned stuff to where those numbers actually work. Very few people eat home canned foods on a consistent basis. The department of health won't be basing things on politics, they will be basing things on science. I think based on the science; the low acid foods are potentially a dangerous thing. From that perspective, they will be on the side of safety, unless we mandate something differently. I think that is dangerous. The question of liberty versus other stuff, our books are absolutely filled with laws. If you take that example earlier to the extreme, then we don't need any laws because we will all just have liberty. What does our constitution talk about? Civil society and a safe society. That is what this is all about. We have lots of protections. We can go into a building and be fairly sure that the roof isn't going to fall down or we won't get electrocuted when we turn on a switch because of all these regulations. All regulations are not a bad thing, it provides safety. Also the fact that you can't go 100 miles and hour down the road or that people are supposed to stop at stop signs, those are all things that keep us alive. Having guide posts and laws is not a bad thing. I am for cottage foods, which is why I think we shouldn't have this in here. If we have an incident or someone gets sick, which will set the cottage food industry back a long ways. I think it is irresponsible. I don't want to see this die, but if we let it, the administrative rules are going to be a lot more strict then what the Senate is proposing. You can try for perfect and you end up with nothing; you can try for excellence I think we can hit it. Excellence I think is what we have in the Senate version.

Vice Chair Myrdal: Thank you. We can sit here forever and discuss liberty, the constitution, personal rights; I think we are limited in time. We have gone through 4 months and discussed that. We need to focus on the language that the House did not concur with in the Senate. Can we keep or not keep; can we deal with or not deal with; is there any willingness to move on it? I have expressed what the Senate is interesting in doing, that is where I'm at.

Representative Skroch: I would just say that even if we pass this in the form the Senate is recommending, what mechanism is there to stop the health department from adding on through administrative rules.

Vice Chair Myrdal: They can't change anything we put in century code.

Representative Skroch: If we don't pass this, and they are permitted to write administrative rules, what is to stop them from writing administrative rules if we do pass this?

Senator Klein: They don't want to go through the rules process if they don't have to. It requires a notice in all the papers across the state, which is \$5,200. They have to have 2 hearing, then they come before the rules committee where once again, people are somewhat lobbied to represent what they believe was legislative intent. Then legislators, who represent every committee, will determine if it was the intent that we go beyond what we have spent 2 sessions working on. I would argue the message is there, the legislative intent is here. Should we pass this and they move things along and change rules, they would have to go through that process of public hearings, bring it to the committee, etc. The committee would have to determine whether it is arbitrary or capricious, if they avoid the law, there are a variety of issues. I want to get back to the legislative intent. Last session we wanted to be very specific. Council said, "you don't want to be specific. We want to have the department make the rules. We aren't sitting here to figure out what all of these should be, that should be done in the rules." That was the intention. We can't narrow everything down to a perfect definition. That was the intent when I left last time thinking the rules would be applied too. I've been poo-pooed because I said I was going to have conformity and consistency. I still do. Green beans were never allowed before last time, I didn't think they would be allowed last time. We still want them to allow it. That was conformity. The issues where eggs were ok in Mandan, but not in Bismarck; frozen stuff was ok on one side of the river, but not the other. Here we are arguing over green beans. I'd rather be here talking about whether long-term care should get a bigger increase or how we fund K-12, but we are talking green beans. I think there is a resolution here. I think the House did a good job with the temperature for 4 hours. We are hung up on 1 item. We are down to this one issue that I never thought was going to be a part of the law, and I still don't believe it should be part of the law.

Senator Larsen: In putting this bill together, I've noticed a few things that have been good about this. To be able to go on the internet and do some sales. As I think about moving this forward or killing it, I like the idea about that internet and the informing consuming definitions. The non-commercial use versus the home, another good piece. Then the home consumption, that was a very key piece so that we can be at the farmer's market and I can pick up some stuff and give it to my daughter. I think that worked, it is a good thing. The additional regulation of being able to not have the wild mushrooms and the alcohol that was added. I kept thinking why are we putting that in there, why. The only thing I can think about, if the bill dies maybe, we can start making the wine and selling it at the thing. That Kombucha stuff is getting to be a big thing. That is a fermented type of drink. It isn't alcohol, but it goes through a fermentation process. I'm not sure if that is something we want to expand with the food industry. I think this bill makes this better to take that off of there. The moisture levels and the tool to check the P.H., the home processed part. There is a lot of good stuff in here. I don't think it is a big thing with the cut veggies or the acid. No one has gotten sick. There is no data on it. I would be open to leaving the cut vegetable thing and the refrigeration thing and striking the acid

part. That is my motion if there is any movement on that. If there is no movement it dies, and the good pieces would be gone.

Senator Klein: For clarity, you're suggesting we add back in the cut fruits and vegetables that the House put in, but still staying with the low acid.

Senator Larsen: I don't see where you can't do it. I know it's been told to me, it doesn't say in law and in the code. I'll support the whole thing as well too. I just want the cottage industry to continue to be that avenue to toggle over to be licensed if they take off.

Vice Chair Myrdal: I am not opposed to that. If we can have some discussion on that.

Representative McWilliams: I don't know if this is an idea or not, since we seem to be hung up on the low acid foods, what would happen if we simply took out the entire section of the bill and allowed the health department to make rules on that section?

Vice Chair Myrdal: My first reaction would be no. If we are going to do it this way, because what happened last time, was they weren't able to do the rules because of lawsuit threats. I think we need to do the complete job here. It's either or.

Senator Klein: I kind of like that idea, but since we are here, I think they could give us some ideas. I think the rules around that are going to put us at odds who still want to do those. I don't know that there will ever be any rule that would allow it. They have never allowed it, I don't think they will allow it. I know where Representative McWilliams is going but I still would like not to have to spend the states money in going through a whole process that we have worked hard on. Everyone here has worked hard on. That is my thought.

Representative McWilliams: I agree that we need to be able to address it and it's better to pass something out. I think we all agree on that. It gives clarity and certainty to the industry. I don't think we will ever agree fundamentally on whether we want to allow low acid foods. It will be an impasse. We can draw it out, try replacing committee members, and doing all of that stuff. Ultimately, I think the bill has a potential of failing in the House if we leave low acid in there. If we try to pass out what we can and what is good, then let the other cards fall where they lay. Let's work on the things we do agree on and separate out those things we will simply never agree on no matter how much we talk about it.

Senator Klein: If the Chair constructs some sort of amendment that provides everything that we have, except the low acid foods? Puts the cut vegetables back in, then we can come back. That would also remove the language I think is troublesome with botulism and death. Then we can come back and look at it to see if that is what we agreed to. If we could look at something in a hard copy.

Senator Larsen: I think what really resonated with me why I don't have a hang up with the cut veggie thing, was 2 testimonies. There was a lady selling cauliflowers, this old guy couldn't eat the whole thing, so they cut it in half. The other testimony was that we are supposed to be promoting healthy lifestyles and all that. You go to these farmers markets and what do you see? Bread, pies, all of the stuff that is not healthy. She said, why not have

coleslaw or stuff they are preparing like celery. If you cut up celery or carrots or radishes. I don't think I have a problem with that, it is a lot better than eating that big pie.

Senator Klein: As soon as you cut it, you have to date it and refrigerate it. Under this time and temperature thing... Yes the national outbreaks with shredded romaine, the shredded stuff is more apt to get bacteria and I understand that. Equipment needs to be cleaned over the years. I watched Land of Lakes close their facility in Minot because they could get the bacteria cell count down. Those are critical issues. By the way, you can maybe use the hot-tub again in Casselton, the bacteria makes the news with outbreaks. Those are concerns. I think why we're here is trying to come up with the compromise. If that would work, I would just reach out to our colleagues across the way.

Vice Chair Myrdal: I will go draft something.

Representative Skroch: Through the course of the testimony, we did hear how vigilant these producers are. They have invested in high-tech refrigeration systems that can run off generators and things like that. We have ice more readily available. I don't want to over react to maybe fear mongering. We do have a lot more opportunity to keep food safe now than we did 20-30 years ago. I think that is a positive peace of mind.

Representative Satrom: I am not a big fan of cutting things, but at the same time, I don't see cutting a cauliflower in half, that is different than cutting it for preparation for ready eating. I would make a differentiation there. I would give up my objection if we can work the big thing of low acid. I can plug my nose on the rest of it.

Vice Chair Myrdal: That is how I feel too. I appreciate the discussion. I will go to Legislative Council, have something drawn up and also clarify what those fresh veggies and fruits mean. If it means just by itself or I heard the word coleslaw. I will talk to Legislative Council about the legalities of that.

Representative Satrom: Should we be talking to the health department too? If there is anything that might be problematic. We don't want to create a problem.

Vice Chair Myrdal: I will do that too.

Senator Larsen: We have this where we are trying to regulate and add rules to the fledgling industry. Then I can take my cut up veggies to the bar at the end of the table and put your \$20 bucks in there because we are raising money for cancer or something. There is no regulation on that at all. That is where I want to be very careful about what we regulate. The one person gave testimony that they make slush burgers and bring it in for this thing, there is no regulations there.

Vice Chair Myrdal: It's covered under a different section of code. We will stand in recess until next time we meet.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2269
4/17/2019
JOB # 34806

Subcommittee
 Conference Committee

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|---------------------------------|
| Committee Clerk: Florence Mayer |
|---------------------------------|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota Century Code, relating to cottage food production and sale; and to amend and reenact sections 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to consumer sale of cottage food products.

Minutes:

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| Attachment #1 |
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Vice Chair Myrdal: Opened the conference committee on SB 2269. Roll call was taken, all members were present. The conference committee consisted of Senators Myrdal, Larsen and Klein; Representatives Satrom, Skroch, and McWilliams.

This is our 3rd and final meeting hopefully. We have had some long discussions on this. We ended yesterday with me saying I would bring some amendments, which are in front of you. (Handed out **Attachment #1**, a proposed amendment.) We were at a standstill with the low acid canned goods. I will give you a few minutes to go over the amendments if you like and we will go from there.

Senator Klein: Maybe we can walk through this. I think when we left yesterday, I was of the idea that we would put back cut fruits and veggies, remove the low acid foods, and the language that says death and botulism. Where are the primary changes?

Vice Chair Myrdal: There is a change "numerations" that is just housekeeping. The big change is on page 3, line 17, subsection 18, which is the uncut foods things. That puts it back in because it was out in the Senate version. Next is page 5, line 6, subsection 7, deals with the uncut/cut foods again. Section 3 subsection 1-d, which is still the agreement we had under refrigeration of 45 degrees. The bottom of that page, line 30 and the next page, the fresh cut fruits and veggies that are blanched and frozen. Page 6 is quite substantial; it has the major change on lines 12-17. We had 3 points of contention. It was the cut fruits and veggies, canning and acidity and the refrigeration issue. From the House version, the only Senate part we are keeping in, they were never allowed and we are not allowing the canned low acid issue. That is basically the part of this bill that the House will have to give on.

Representative Satrom: I am curious if there is any potential dangerous areas where people may take the cut fruits and vegetables to places we don't intend to go. Does this mean they can make some coleslaw and set it out?

Vice Chair Myrdal: No they can't. If we need more specifics, we have people in the room that I can call up. Not for testimony, but neutral testimony on scientific issues.

Representative McWilliams: In response to Satrom's questions, we can see the language pretty clear on where or where not cottage food products can be sold. I wouldn't see any deviation from that on either version.

Vice Chair Myrdal: I'm not sure that was the concern. It was the concern of production of cut fruit and vegetables in certain dishes that take creams and other things that need to be refrigerated.

Representative McWilliams: A question I do have, page 5, subsection 2 line C. #30, "the products are fresh cut fruits and vegetables that are blanched or frozen". Does that then mean that the only way they can sell fresh cut fruits and vegetables is if they are blanched or frozen?

Vice Chair Myrdal: No. For clarification, if we have questions, I will ask Julie to clarify. We are not taking testimony; this is neutral information about what it actually says in century code. At my discretion, Julie if you wouldn't mind coming to the podium.

Julie Wagendorf, Director of Food and Lodging, North Dakota Department of Health: Any type of food that is prepared and mixed in with ingredients that require time and temperature control for safety, are prohibited as cottage food products under section 3 subsection 3. It says, "The following cottage food products are not authorized for sale under this chapter. Food requiring time and temperature control for safety." All of that is excluded except for what is authorized. That is now listed, those are the baked goods, seed sprouts of any variety, then the fresh cut leafy greens, tomatoes and melons. Those are in our food code that require time and temperature control for safety. Other types of cut fresh fruits and vegetables are not considered the time and temperature control for safety products. Only the 3 bad guys. We are allowing those in now, based on these amendments.

Representative Satrom: Can you say that one more time so it sinks into my brain?

Julie Wagendorf: I'm on the Christmas tree version, page 5 section 3. Section 3 lists cottage food products on line 11. "The following cottage food products are not authorized for sale under this chapter". It lists everything not authorized for sale unless it is written as an exception.

Senator Klein: I heard you say "those 3 bad guys". Remind us why those 3 are bad guys.

Julie Wagendorf: That probably wasn't the best term to use. The cut leafy greens, melons and cut tomatoes, in years past have been implicated in several outbreaks. It is apparent they can withhold and allow for rapid growth of bacteria. They've been included in FDA standards as requiring time and temperature control for safety. Typically, you don't have cut

fruits and vegetables needing that definition, because they weren't implicated in outbreaks. Over the past 6-10 years, we have had better laboratory testing. Technology itself has allowed us to identify that these are products that are implicated; because of that, FDA and CDC have mandated they require time and temperature control for safety in order to control for that bacteria growth.

Senator Klein: These amendments allow us, prior to the amendments they weren't allowed, but now we are opening the door to the bad guys.

Julie Wagendorf: That is correct with these amendments. The reason the health department was not recommending including these types of items is that they are at high risk for listeria, salmonella and E.coli. For those reasons, they weren't recommended, because of that high risk. We were targeting lower risk foods for this type of industry.

Vice Chair Myrdal: These are the ones in Section 3 that cannot be. This whole bill has dealt with the exemptions to those. I think that is important to read that in conjunction with each other so we don't get confused.

Representative Satrom: So we are saying fresh fruits and veggies are fine to sell with these exemptions? (Yes.) I have real concerns about that. I realize the argument that came before was well you only want to buy half of a melon or half of a cabbage. Cutting that is not preparing it for food. Preparing this fresh cut is for immediate consumption. That is a whole difference story then cutting it in half so you can take it home. I'm the minority here, I don't have a voice, but I have real heartburn about that.

Representative McWilliams: Just to switch focus here, Page 5, #2, under home canned products. We had discussed eliminating all the language references to canned products. When we say only home canned products unless, then we give high acid foods. We are then eliminating low acid foods. I wanted to be able to eliminate all references to canned goods in entirety. Then allow that section to sit apart in a different process.

Vice Chair Myrdal: That is not the intent that I understood. From our discussions, I think the Senate has been extremely clear that that is a non-negotiable issue for us.

Representative McWilliams: I cannot support this amendment.

Senator Klein: We all have a voice and an opportunity to voice our opinion. Whether it is acceptance or unacceptance of what we are doing. It is still my understand that even with cut there is still time and temperature control? You can't just cut it, put it in the back of your pickup and drive around. You still have to maintain temperature control?

Julie Wagendorf: Other than the 3 listed, they don't require time and temperature control for safety. You would more than likely refrigerate. If your talking you will cut up peppers, cucumbers, other types of fresh fruits and vegetables, typically you refrigerate them because it helps maintain the quality. In the food code they are not labeled or defined as the time and temperature controlled for safety.

Senator Klein: But the bad guys do require it? The ones we are really concerning ourselves about still require the time and temperature control.

Julie Wagendorf: That is why they are listed specifically, because they are defined as time and temperature controlled for safety. We excluded those items that don't require time and temperature control for safety are allowed, because they are not excluded otherwise.

Senator Klein: I may not have understood entirely either yesterday. I thought the resolution was to provide the cut fruits and veggies and eliminate the low acid side. We had a little discussion on whether or not the health department should create rules. I thought it was incumbent upon us not to have the state spend a bunch more money on rules when we are here to provide those. I'm not sure what is your perception of what we should be doing or aren't doing.

Representative McWilliams: The other parts I think we can live with. I thought it was fairly clear, that if we removed all references to canned goods in it's entirety, then we are taking out the most contentious part of the bill. Then we are voting on those things we do agree on. That was my understanding leaving the committee yesterday. I thought that is what we had agreed on.

Senator Larsen: My thought was, and I did hear a little bit of that conversation with removing that whole part; but as we left I thought we were just removing the low acid part and then adding the cut veggies. I think we are all on board with that. I do remember you discussing that, I didn't wrap my head around the entirety of what that meant. If we take the low acid out, we still have salsa and things like that you have to test to make sure the acid is right. I didn't that was too bad of a deal. I didn't know if there was too much push back prior to that. It was just another safety measure. That is what I wanted to speak to.

Vice Chair Myrdal: I think reality is, we came to this table with 2 bills. We are charged to come together and figure out what both sides can live with. I think if you remove the entire section of the low acid or canned goods, then it's a free for all. We will not go into the interim free for all. Then you're getting everything, it's like a Christmas present. That was never in my mind when I drafted these and I think we made it pretty clear yesterday. That point we will not come to an agreement on. My understanding was we would give on the Senate side, this is so we don't need to go into administrative rules and go through this whole hearing process and the threat of lawsuits and others. I think we are charged here as legislators to come to some point of agreement to make it the best for the cottage food industry. I think the health department has gone beyond with us on this. As a committee we need to discuss what is set before us today and if we are willing to go in that direction or not.

Senator Larsen: I was wondering, if this bill and the amendments were to move forward, has there been discussion that the health department won't come forward to make these rules that were talked about in the interim that caused this fluff? Or is it just whatever and we will see what happens?

Vice Chair Myrdal: There will not be any administrative rules on this. Last session we left with the understanding there was a rules process coming. That was set into motion and then it was stopped. These are the rules. We have taken the administrative rules that would have

been set by the health department. We have come back to the table this session and put them in code, and this is the final product. There is fear mongering outside of this room, that the health department will come and put more rules on it. They would have to go through an extensive process to do so. The legislative intent is so clear; I don't think they would have a change to do much of that.

Senator Klein: As long as we have someone from the health department here. Julie you've worked on these for a long time. These are the final rules and will be in code. Is there any reason you would need do move forward with more rules on this particular section of code?

Julie Wagendorf: The only reason the health department needed to move forward with administrative rules is to further define the jams, jellies and other food and drink. That is in this bill, there is no further need and no plan to do so.

Representative Satrom: If we say something is ok and there is a problem, are we inheriting some liability as the state in the process? Maybe a representative of the Attorney General's office could speak to that.

Senator Klein: Is there an expectation in the public that if you get sick at a restaurant and call you, which they have someone who will go and make sure this doesn't happen again. Is your agency involved in that? Citizens have some expectation that we are looking out for them. Unfortunately, sometimes they should be looking out for themselves. That is why we go to every restaurant, grocery store, places where they make beer. We want to make sure they are staying within those tolerances. Are we hanging you out there by putting something this loosely written?

Julie Wagendorf: I would imagine that anyone could sue anyone for any reason. If it happens, it happens. The licensing under current state laws is an agreement of the operator that they understand and abide by the food code. Which are the statutes adopted by the legislature and the administrative rules the health department is mandated to regulate. By paying for and signing that licensee, that is an agreement. The inspection part of that is the accountability part of that. It is an assessment of compliant that is with the rules and law. If there is some issue then there are penalties in place to stand up for that accountability. The base of that all is the state of North Dakota provides a safe food source for it consumer with all measures taken to ensure it is not adulterated or misbranded. That is the whole purpose of why my department is here.

(27:56) Representative McWilliams: Moved the House Recede House Amendments and amend as follows. Amendment #19.0887.04009.

Senator Larsen: Seconded.

Senator Larsen: This is a good piece. I think for myself there is a little bit of government overreach in there. There has been no casualties from this. If this moves forward and passes this will be better for the industry and give clarity there. If it does die, we will be right back to square one and then chaos. I think this is a movement of fluid government if it moves forward.

Representative Skroch: The people who will benefit from this regulation if you want to say it this way. It allows for enough freedom to establish new cottage industries and I think it is beneficial to families, state and economy. I am confident that they will take all precautions of safety. The data that comes out in other states has affirmed that with no cases of any food poisoning. I am comfortable with the bargaining that went on here. I am ok with it at this point.

Senator Klein: I do appreciate all the efforts the health department had and the give and take we've had. We have a product that everybody understands. We heard from the health department that these are the rules. We shouldn't have to worry about them having to create rules, which could create some discussion. That we hopefully can sit back and that in 2 years we can look back and see how well it worked and that there are no incidences. If there are issues that come up, that is why we meet every 2 years and have a voice in what goes on here.

Vice Chair Myrdal: I would concur with all the comments. No doubt all the people in both committees are pro-cottage food industry. It is important to represent our constituents and the safety issue. I am glad the health department has worked tirelessly on this issue with us. I hope we can get this to the governor's office and stay focused that this is a joint product that we came up with and not continue any negativeness. It has been pretty intense social media on this issue. It think something that is a shame with the misinformation out there.

A Roll Call Vote Was Taken: 6 yea, 0 nay, 0 absent.

Motion Carried.

**Senator Myrdal will carry the bill in the Senate.
Representative Satrom will carry the bill in the House.**

Vice Chair Myrdal: Thank you committee. We will adjourn.

April 16, 2019

SK 1002

4/17

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

That the House recede from its amendments as printed on pages 1367-1369 of the Senate Journal and pages 1537-1539 of the House Journal and that Engrossed Senate Bill No. 2269 be amended as follows:

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after "8." insert "Food" means an article used for food or drink for human consumption.

9."

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 3, line 25, remove the overstrike over "Involve interstate commerce"

Page 3, line 25, remove "Occur outside the state"

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 9, remove "and"

Page 5, line 10, after "misbranded" insert "; and"

d. In the case of raw poultry or shell eggs transported by the cottage food operator, maintained frozen, except for shell eggs, which must be transported and maintained under refrigeration of forty-five degrees

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Fahrenheit [7.2 degrees Celsius] or less if washed, or at room temperature if unwashed"

Page 5, line 14, remove "or"

Page 5, line 15, after "products" insert "are dehydrated or are freeze dried and the products"

Page 5, line 15, after "level" insert " or

c. The products are fresh cut fruits and vegetables that are blanched and frozen"

Page 5, line 16, remove "baked or"

Page 5, line 17, after "otherwise" insert "authorized under this section or"

Page 5, line 17, replace "A food" with "Food"

Page 5, line 18, remove "which is a cottage food product authorized for sale"

Page 5, remove line 19

Page 5, line 20, replace "a. If" with "must be labeled in accordance with the requirements of this chapter and if"

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 20, remove ", except for"

Page 5, remove lines 21 and 22

Page 5, line 23, replace "b. Must be labeled in accordance with the requirements of this chapter" with "or, if a period of four hours or more occurs between transportation by the cottage food operator and delivery, must be maintained frozen by the cottage food operator. Cottage food products authorized for sale under this subsection are:

- a. Baked goods;
- b. Seed sprouts of any variety; and
- c. Fresh cut leafy greens, tomato, and melon"

Page 5, line 25, remove "in a baked good"

Page 5, line 27, remove "Seed sprouts of any variety."

Page 5, remove lines 28 through 31

Page 6, remove lines 1 and 2

Page 6, line 3, remove "9."

Page 6, line 4, replace "10." with "7."

Page 6, line 5, replace "11." with "8."

Page 6, line 24, after "Handled" insert "Refrigerated or"

Re-number accordingly

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

SENATE BILL 2269 as engrossed

Senate Agriculture Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative McWilliams Seconded by: Senator O. Larsen

| Senators | 4/16 am | 4/16 pm | 4/17 | Yes | No | Representatives | 4/16 am | 4/16 pm | 4/17 | Yes | No |
|-------------------|---------|---------|------|-----|----|-----------------|---------|---------|------|-----|----|
| Myrdal, Chair | ✓ | ✓ | ✓ | ✓ | | Satrom, Chair | ✓ | ✓ | ✓ | ✓ | |
| O. Larsen | ✓ | ✓ | ✓ | ✓ | | Skroch | ✓ | ✓ | ✓ | ✓ | |
| Klein | ✓ | ✓ | ✓ | ✓ | | McWilliams | ✓ | ✓ | ✓ | ✓ | |
| | | | | | | | | | | | |
| Total Senate Vote | | | | 3 | | Total Rep. Vote | | | | 3 | |

Vote Count : Yes: 6 No: 0 Absent: 0

Senate Carrier Myrdal House Carrier Satrom

LC Number 19.0887 . 04009 of amendment

LC Number 19.0887 . 06000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2269, as engrossed: Your conference committee (Sens. Myrdal, Klein, O. Larsen and Reps. Satrom, McWilliams, Skroch) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1367-1369, adopt amendments as follows, and place SB 2269 on the Seventh order:

That the House recede from its amendments as printed on pages 1367-1369 of the Senate Journal and pages 1537-1539 of the House Journal and that Engrossed Senate Bill No. 2269 be amended as follows:

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after "8." insert "Food" means an article used for food or drink for human consumption.

9"

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 3, line 25, remove the overstrike over "~~Involve interstate commerce~~"

Page 3, line 25, remove "Occur outside the state"

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 9, remove "and"

Page 5, line 10, after "misbranded" insert "; and

d. In the case of raw poultry or shell eggs transported by the cottage food operator, maintained frozen, except for shell eggs, which must be transported and maintained under refrigeration of forty-five

degrees Fahrenheit [7.2 degrees Celsius] or less if washed, or at room temperature if unwashed"

Page 5, line 14, remove "or"

Page 5, line 15, after "products" insert "are dehydrated or are freeze dried and the products"

Page 5, line 15, after "level" insert "; or

c. The products are fresh cut fruits and vegetables that are blanched and frozen"

Page 5, line 16, remove "baked or"

Page 5, line 17, after "otherwise" insert "authorized under this section or"

Page 5, line 17, replace "A food" with "Food"

Page 5, line 18, remove "which is a cottage food product authorized for sale"

Page 5, remove line 19

Page 5, line 20, replace "a. If" with "must be labeled in accordance with the requirements of this chapter and if"

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 20, remove ", except for"

Page 5, remove lines 21 and 22

Page 5, line 23, replace "b. Must be labeled in accordance with the requirements of this chapter" with "or, if a period of four hours or more occurs between transportation by the cottage food operator and delivery, must be maintained frozen by the cottage food operator. Cottage food products authorized for sale under this subsection are:

- a. Baked goods;
- b. Seed sprouts of any variety; and
- c. Fresh cut leafy greens, tomato, and melon"

Page 5, line 25, remove "in a baked good"

Page 5, line 27, remove "Seed sprouts of any variety."

Page 5, remove lines 28 through 31

Page 6, remove lines 1 and 2

Page 6, line 3, remove "9."

Page 6, line 4, replace "10." with "7."

Page 6, line 5, replace "11." with "8."

Insert LC: 19.0887.04009
Senate Carrier: Myrdal
House Carrier: Satrom

Page 6, line 24, after "Handled" insert "Refrigerated or"

Renumber accordingly

Engrossed SB 2269 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

SB 2269

Good morning Chairman Luick and members of the Senate Agriculture Committee. My name is Julie Wagendorf, Director of the Division of Food and Lodging within the Department of Health. I am here to support and provide information on Senate Bill 2269 that clarifies the laws and regulations for cottage food production and sales.

North Dakota Century Code Section 23-09.5 defines a cottage food product as "baked goods, jams, jellies, and other food and drink products produced by a cottage food operator." For any cottage food operator preparing cottage food products in a home kitchen, a license and inspection is not required by the Department of Health.

The concern with the current cottage food law is the level of confusion over the definition and interpretation of what "other food and drink products" are. The Department of Health supports the language in SB 2269 that offers further clarification. Following my testimony, I can review these sections of the bill and the attached handout listing cottage food products being proposed by the bill.

During the 2017 legislative session, the Department offered support of HB 1433 regarding direct producer-to-consumer sales of certain food products defined as 'cottage food products' and supported a law that could be administered uniformly throughout the state.

Since the law was enacted, there has been confusion related to the intent of this law. We've received questions about whether the law is intended to allow for all kinds of food and drink, if the law intended to permit home-based catering and home-based restaurants, and if the intent was to dismantle and negate mobile food truck and temporary food events from licensing requirements. These are examples of food establishments defined by existing chapters of state law that conflict with the types of transactions prohibited in the current cottage food law. Section 2, Subsection 4 of NDCC 23-09.5 states that a cottage food operator may not sell or use food in any food establishment or food store because these require a license to operate. Yet, we have received several reports of this occurring since the cottage food law was enacted. The most common

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misunderstanding is the sale of meat and meat products and whether it is permitted under the current cottage food law when really meat products are regulated.

Existing food laws and regulations require food establishments to be licensed and inspected based on the types of foods they have that require time and temperature control for safety, and how food is to be stored, prepared, served, or sold. Exclusions from licensure need to be referenced so that chapters in law do not contradict each other. SB 2269 offers a clear separation of cottage food operations from licensed food establishments.

As of 2018, 49 states have enacted cottage food laws. Most state cottage food laws set criteria that define cottage food products. Aside from Wyoming, SB 2269 offers North Dakota the fewest restrictions on unregulated cottage food products.

The Department of Health is in support of the cottage food law as presented in SB 2269 and we recognize the benefit this can serve for small, start-up food businesses. At the heart of every vibrant community are businesses and special events that keep the local economy thriving. The food industry continues to grow and change with consumer and market demands and we recognize that food regulations also need to change and adapt.

We're happy to work together on a solution that builds and adds value to our state's integrated food system while preserving public health and safety for the consumers we serve.

Cottage Food Products Authorized Under SB 2269

- Baked goods such as breads, quick breads and muffins, lefse, cookies, no-bake cookies, biscuits, crackers, donuts cakes, pastries, candies and confections (made without alcohol) such as caramels, chocolates, fudge, brittle, hard candy, and cotton candy, fruit pies (including pecan pie) and fruit empanadas such as apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants or a combination of these fruits.
- Time and temperatures for safety (refrigerate) baked goods when labeling and storage requirements are met, such as: pumpkin pie, sweet potato pie, cheesecake, custard pies, crème pies, meringue pies, cakes with glaze or frosting that requires refrigeration (e.g., cream cheese frosting), and pastries with fillings or toppings that require time and temperature control for safety.
- Fruit jam, fruit jelly, and fruit preserves including, but not limited to: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants, or a combination of these fruits.
- *Note: Vegetable and other non-fruit-based jams and jellies such as rhubarb, tomato, and pepper are not permitted unless acidified to pH equilibrium of less than 4.6.*
- Fruit butters including apple, apricot, grape, peach, plum, quince, and prune. Pumpkin butter, banana butter, and pear butter are allowed if the equilibrium pH is less than 4.6.
- Freezer fruit jams
- Chocolate covered pretzels, marshmallows, graham crackers, Rice Krispies treats, strawberries, pineapple, bananas, or other non-perishable foods that do not require time and temperature control for safety.
- In-shell eggs (1,000 bird exemption) if properly labeled.
- Raw Poultry products (1,000 bird exemption) if properly labeled.
- Acidified or fermented fruits or vegetables with a pH equilibrium of less than 4.6, including pickled fruits and vegetables such as pickles, salsa, sauerkraut, kimchi, fruit chutney, applesauce.
- Cut Leafy greens that are dehydrated or blanched and frozen. Fresh cut leafy greens are not permitted for sale.

Note: "Cut leafy greens" means fresh leafy greens where leaves have been cut, shredded, sliced, chopped, or torn and does not include the 'harvest cut' at the stem or stalk. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature

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#1 pg. 4 lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

- Cut fruits and vegetables if grown by the cottage food operator and dehydrated (includes freeze dried) or blanched then frozen; if properly labeled. Dehydrated tomato or melon and frozen cut melon are not permitted for sale.
- Dry herb/dry herb blends
- Dry shelf-stable products, such as seasoning blends, baking mixes, dip mixes, soup mixes and tea blends.
- Roasted coffee beans or ground roasted coffee
- Dry pasta
- Tree nuts (coated and uncoated)
- Legumes
- Honey, molasses, sorghum, maple syrup, maple sugar
- Flour, grains, dry cereal, popcorn, popcorn balls, granola, granola bars, dry mixes
Note: Dry bulk mixes sold wholesale can be repackaged into a cottage food product. Similar items already packaged and labeled for retail sale cannot be repackaged and/or relabeled.
- Vinegar and flavored vinegars
- Sauces and condiments, including barbeque sauce, hot sauce, ketchup, or mustard where the equilibrium pH level has been reduced to 4.6 or less and verified using a calibrated pH meter.

Noteworthy:

Whole, uncut fruit and vegetables harvested and packed for sale at produce stands/farmers markets are not considered 'cottage foods' because they are not covered under the ND Food Code as retail food sales requiring a food license. Whole, uncut fruits and vegetables which are allowed for sale.

Hello Chairman and members of the Committee. For the record, my name is Carel Two-Eagle and I stand in support of this bill, with some amendments.

Cottage foods are, and have always been, a staple of life for most of us. The incidence of illness from cottage foods is very low – I would venture to say, lower than commercial foods of the same type.

Cottage food production is a great way for someone to supplement his or her income, or for a micro-business to determine if a product has commercial potential. Such an entity can make a cottage food product via a private individual, get responses from buyers, & otherwise determine potential for commercialization without the costs of special facilities, licenses, & inspection. This is a boon for all concerned, and can result in establishing either another small business in ND, a la “Pride of Dakota” companies, or putting another product into an existing business’s product line. “Commercial” here does not automatically mean “big business”, of course.

I would like to suggest rewording 2 parts of this bill, however. On Page 1, Line 11, the bill reads, “Baked goods means a food produced from a dough or batter which is usually baked before consuming, including jump to Line 14, ...”candies, or chocolates”... I make “terrific truffles healthy candy”. My truffles are chocolate but are not baked. I don’t know of any candies, especially chocolate, which are baked. Therefore, I believe the bill would better achieve its objective here if the wording on Line 11 were changed from “...baked...” to “baked or otherwise cooked”.

A similar change should be made on Page 1 Line 22, replacing the word “baked” with “baked or otherwise cooked”.

Then on Page 5 Lines 24 & 25 – this wording appears to forbid the sale of raw milk. I produced raw goat milk for some 10 years. I sold it as uninspected pet milk. I made sure that my somatic cell & bacteria counts met Grade A standards. I always had more buyers than I had milk to sell, and if anyone ever got sick from my goats’ milk, the world would have heard about it. No one ever did. The inspector tried the entire time to “catch” some problem in my goats’ milk, and never did – because there was never a problem.

Moreover, there are many more benefits to be had from drinking raw milk than there are potential concerns. I don’t know of a dairy farmer who has ever

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pasteurized his or her animals' milk before drinking it, and I have never heard of a dairy farmer or family member who got sick from drinking their animals' milk, be it goat or cow.

Thus, I believe this section of the bill should either be removed or reworded. I would prefer removed, and I expect other people will, too.

Thank you for your time and attention to my views. I am always available to answer any questions.

TESTIMONY – SB 2269 Opponent

By LeAnn Harner, Mandan, ND
goat@harnerfarm.net
701-516-0707

I'm asking you for a Do Not Pass on SB 2269.

I'm not a cottage food producer, but did help with this legislation as it went through the 2017 Legislature and served on the Cottage Foods Working Group.

Let's talk about the cottage food industry and the people behind it. They're families trying to make extra income without a major investment. These are handmade products, with lots of labor. These are not cheap products.

Not all transactions take place at farmers markets. Many people sell out of their homes.

Specific places I disagree with this bill:

- Page 1, Item 5. – Excludes whole, uncut fresh fruits and vegetables
 - We need this provision to prevent local health districts from imposing rules.
- Page 2 – The definitions needed depend on what you do with the rest of the bill.
- Page 3 – Mostly rewriting what is already in code. I appreciate line 12 that regulation is inserted and line 13 where packaging is included.
- Page 3 – 4 – There's important wording here that's being struck out.
- Page 4 – Line 20 – That should be a number 5 where the 9 was struck out. I appreciate the addition of clarifying language that producers can use the internet to advertise.
- Page 4, Items 5 and 6. The bill already states this is for home consumption or noncommercial consumption. Do we really need to restate that fact?
- Page 5 – Here's where we have the biggest problem. When we begin talking about poultry and eggs, those have always been under the Department of Ag. In 2017, the description of poultry followed the same guidelines as the ND Department of Ag, which follows USDA rules.
 - That includes the home slaughter of up to 1,000 birds per year; raised by the producer. The producer has the right to sell those processed birds and products. **This does NOT mean the producer can only raise 1,000 birds.**
 - **ND Dept of Ag and USDA allow a home producer to sell eggs from 3,000 birds.** They do NOT require washing or refrigeration of eggs.
 - Quote from NDDA Farmers Market Handbook: *"At a farmers market it is SUGGESTED eggs should be cleaned and kept refrigerated..."*
 - From USDA.Gov: *"Should you wash eggs? No. It's not necessary or recommended for consumers to wash eggs and may actually increase the risk of contamination because the wash water can be "sucked" into the egg through the pores in the shell. When the chicken lays the eggs, a protective coating is put on the outside by the hen. Government regulations require that USDA-graded eggs be carefully washed and sanitized using only compounds meeting FDA regulations for processing foods."*
 - Current wording in Century Code is correct. (Page 3, lines 29-31 and Page 4, lines 1-3)
- Page 5, Line 11 – Home canned products should be allowed. Yes, there are food safety concerns, but cottage food operators have a stellar record of food safety.
- Page 5, Line 16 – Refrigerated products should be allowed. Shell eggs should not be required to be refrigerated.
- Rest of Page 5 – Again, they're picking "good" and "bad" foods. When you review incidents of foodborne illness in North Dakota, you don't see these foods causing problems and especially not from home use.
- Page 6, Section 4 – Much of what you see as far as warning, etc. are already in code. Cottage food operators have to tell the public this is made in an uninspected kitchen with a sign at the point of sale or with individual labels. We have to provide safe handling instructions. Do we really need to be told exactly what has to be said on the label? When a cottage food operator sells something, there's a discussion with the consumer. The products aren't just sitting on shelves waiting to be picked up. There's a dialogue. Much of the information is transmitted as part of the sale.

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My name is Brenda Daniel I started baking cakes back in 2017 it all started when I went to order a cake for my sons birthday, I called a couple of grocery stores and they were either booked or wanted way to much money for a small two tiered cake so I decided to try and bake and decorate one myself. It turned out great and so I decided to post a picture of it on Facebook. My friends and family commented how awesome it turned. I continued to bake and decorate cakes for my family and every time I made one they would tell me I should start my own business but I realized that was not really a possibility as I really had no idea if others would be interested. That all changed when the food freedom act went into effect, I was able to start a Facebook page with pictures of my cakes and the response was quite overwhelming, I was soon getting enough orders that I was baking cakes full time. I then realized that I have enough business coming in that I could start a bakery which I finally opened this January in the mall in Ray! None of this would have been possible for me if the food freedom act would not have passed it gave me the opportunity to build my business and really get my name out there without having to start with a huge investment!!! The Food Freedom Act has given me an opportunity I would have never thought possible and also help grow a small community by adding a business (Pour Some Sugar Custom Cakes and Bakery). I'm hoping to be able to hire a few people in the future and continue to grow my business!

Brenda Daniel

#5

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FOODBORNE ILLNESSES – 2018 CDC Report

POSTED ON CDC

- November, 2018
- Multi-State outbreak of Salmonella in products containing tahini such as hummus.
- 5 reported cases
- 3 states
- 0 Hospitalizations
- 0 Deaths
- Product was recalled.

November 5, 2018 – Salmonella

ConAgra Brands recalled 4 varieties of Duncan Hines cake mix.

- 7 reported cases
- 5 states
- 0 Hospitalizations
- 0 Deaths
- Product was recalled.

November 20, 2018 – Listeria

Long Phung Food Products recalled ready-to-eat pork patty rolls.

- 4 reported cases
- 4 states
- 4 Hospitalizations
- 0 Deaths
- Product was recalled.

December 13, 2018 – E. coli

Adams Brothers Farming in California recalled red leaf lettuce, green leaf lettuce and cauliflower harvested late in November.

- 62 reported cases
- 16 states plus District of Columbia. Also found in Canada.
- 25 Hospitalizations
- 0 Deaths
- Product was recalled.
- CDC believes the outbreak is over – January 9, 2019.

October 17, 2018 – Salmonella

No supplier identified. Outbreak strain has been identified in samples taken from raw chicken pet food, raw chicken products and live chickens.

- 92 reported cases
- 29 states
- 21 Hospitalizations
- 0 Deaths
- No recall

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- CDC did not state that they believe the outbreak has ended. Their recommendation to the consumers and retailers is to handle chicken properly.

December 12, 2018 – CDC Update

Beef products from JBS Tolleson of Arizona were recalled. Packaged from July 26 to September 7, they were sold under many names. Over 100 retailers were involved.

- 333 reported cases
- 28 states plus District of Columbia. Also found in Canada.
- 91 Hospitalizations
- 0 Deaths
- Product was recalled.

October 3, 2018 – Listeria

Johnston County Hams recalled several types of fully cooked hams.

- 4 reported cases
- 2 states
- 4 Hospitalizations
- 1 Death
- Product was recalled

September 8, 2018 – Salmonella

Shell eggs from Gravel Ridge Farms

- 44 reported cases
- 11 states
- 12 Hospitalizations
- 0 Deaths
- Product was recalled.

November, 2018 through January, 2019 – Salmonella

Jennie-O Turkey recalled raw, ground turkey products.

Woody's Pet Food Deli recalled raw turkey pet food.

A single, common supplier has not been identified.

- 216 reported cases
- 38 states plus Canada
- 84 Hospitalizations
- 1 Deaths
- Product was recalled.

July 17, 2018 – Salmonella

Hy-Vee recalled its Spring Pasta Salad

- 101 reported cases
- 10 states
- 25 Hospitalizations

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- 0 Deaths
- Product was recalled.

July 13, 2018 – Cyclospora

Linked to Fresh Express Salad Mix sold at McDonald’s Restaurants
- 511 reported cases
- 16 states
- 24 Hospitalizations
- 0 Deaths
- Product was NOT recalled.
- McDonald’s voluntarily stopped selling salads at over 3,000 locations in 14 states and have replaced their supplier. No single source or point of contamination was found.

June 15, 2018 – Cyclospora

Del Monte Fresh Products recalled pre-packaged vegetable trays containing fresh broccoli, cauliflower, celery sticks, carrots and dill dip.
- 250 reported cases
- 4 states
- 8 Hospitalizations
- 0 Deaths
- Product was recalled.
- No single source or point of contamination was identified.

June 14, 2018 – Salmonella

Kellogg’s recalled Honey Smacks cereal
- 135 reported cases
- 36 states
- 34 Hospitalizations
- 0 Deaths
- Product was recalled.

July 24, 2018 – Salmonella

Pre-cut melon supplied by Caito Foods of Indiana was likely source. Most ill people reported eating pre-cut cantaloupe, watermelon or a fruit salad mix.
- 77 reported cases
- 9 states
- 36 Hospitalizations
- 0 Deaths
- Product was recalled.

April 13, 2018 – Salmonella

Rose Acre Farms, North Carolina, recalled over 200 MILLION shell eggs.

Cal-Maine Foods also recalled eggs purchased from Rose Acre Farms
- 45 reported cases
- 10 states
- 11 Hospitalizations
- 0 Deaths
- Product was recalled.

June 28, 2018 – E. coli

Multi-state outbreak caused by Romaine lettuce
- 210 reported cases

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- 36 states plus some in Canada
- 96 Hospitalizations
- 5 Deaths
- Product was NOT recalled.

May 18, 2018 – Salmonella

International Harvest brand Go Smiles Dried Coconut Raw

- 14 reported cases
- 8 states
- 3 Hospitalizations
- 0 Deaths
- Product was recalled.

February 21, 2018 – Salmonella

Triple T Specialty Meats recalled Chicken Salad

- 265 reported cases
- 8 states
- 94 Hospitalizations
- 1 Deaths
- Product was recalled.

February 28, 2018 – Salmonella

Sprouts were sold at Jimmy John's restaurants and a grocery store

- 10 reported cases
- 3 states
- 0 Hospitalizations
- 0 Deaths
- Product was not recalled.

February 15, 2018 – Salmonella

Coconut Tree Brand Frozen Shredded Coconut

- 27 reported cases
- 9 states
- 6 Hospitalizations
- 0 Deaths
- Product was recalled.

CASES OTHER THAN 2018

September 29, 2016 – Shiga toxin-producing Escherida coli (STEC) infections

General Mills facility in Kansas City was likely source of outbreak. Multiple recalls.

- 63 reported cases
- 24 states
- 17 Hospitalizations
- 0 Deaths
- Product was recalled.

April 7, 2011 – E. Coli

DeFranco and Sons of California recalled bulk and consumer-packaged in-shell hazelnuts

SB 2269 Testimony

Wendi Johnston

02/07/19

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Chairman Luick and members of the committee, my name is Wendi Johnston. I want to thank you for allowing me to present my testimony today.

My family and I operate a small farm south of Valley City. On our farm, we have 2 large gardens, 30 fruit trees, and many grape vines. In addition to produce we also raise pigs, cows, rabbits, laying hens and in the spring butcher chickens. As a family, we decide how many chicks to raise each year. Everyone pitches in with feeding and caring for the chicks until they are mature and ready for butcher. At that time everyone picks a task, and as a family, we butcher and process the poultry. After we have filled our freezer, we sell the rest. We have repeat customers from Fargo to Mandan. Raising poultry from chicks to maturity helps instill dedication and responsibility into our children.

In the fall we spend hours together laughing and joking around while picking apples. We pick several hundred bushels of apples at that time. Once we have the apples picked we wash and press them to produce fresh cider. Again, everyone has a task, and we all work together, this may seem like a lot of work, but of course, it is worth it because the kids are sampling the product regularly. You know quality control haha. Each September the small town by our farm has a large arts and crafts fair, living on a scenic byway offers us a perfect opportunity to sell product during that weekend. 2017 was the first year we produced cider, and we sold out in the first day, we didn't even have any left over for our family. Lesson learned and in 2018 we over doubled our production meaning my children have fresh cider every day now.

Setting up the farm stand was our children's idea, and they do most of the selling themselves, it is something they look forward to every year. We have had so many customers that we have never met message us after they leave telling us what a good job our children did and what a pleasure it is to be able to purchase cider and goodies from our children. We had repeat customers this past September and new people that stop because of word of mouth. As a child, I remember going to the mountains each year with my parents to a flea market, and the hi-lite of the trip for me was stopping at a roadside stand and bring home several gallons of fresh cider.

This is not just about producing a product to me, it is about FAMILY. We are teaching our kids how to get back to the basics. If we had more families spending quality time together maybe the world would be a better place. I get enormous satisfaction spending this quality time with my family, I get even more satisfaction knowing that Dan and I are teaching our children lessons that I feel are a lost art today, lessons that they will be able to carry on with their families. This used to be common practice in our country. This bill, if passed, will make it very difficult for my family to continue doing these things.

The other evening I was explaining SB 2269 to my teen children when my 5 yr old stopped playing and looked at me confused. He then looked at me and asked, "is selling cider illegal because we do it all the time?" I explained to him that right now it is not illegal, but if this bill were to pass it would be. Without skipping a beat, our 5 yr old put it very simply when he stated, "JUST DON'T PASS THE BILL."

With that, I ask that you please not make it harder for my family to continue in the cottage food industry. I urge you to please give a DO NOT PASS recommendation on SB 2269.

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2-7-19
#7 Pg 1/2

Good morning Mr. Chairman, and Members of the committee,

My wife and I own a small farm of 120 acres near Hebron. Over the last 6 years we have tried several different modes of operation to make a profit on this land. Growing small grains, hay, and commercial cattle were not the answer. We landed on selling food at farmer's markets. We sell produce, chickens, eggs, North Dakota inspected beef, and canned goods at farmer's market and to our friends, and neighbors.

The changes made by the previous legislature with the Food Freedom Act helped us increase our farm income in several ways. They allowed us to sell eggs and chickens at farmers market, as well as value-added products such as pet food and canned vegetables. Being able to bring our eggs and chickens to our customers rather than them having to come to the farm has greatly increased our volume of sales. Selling canned vegetables helped to preserve garden produce that often becomes ripe all at once and sell it over a longer period of time. Selling pet food gave us a new marketing advantage for organ meats and previously unsold bones to dog and cat lovers.

Our customers buy our products because they desire wholesome foods that are picked at the peak of flavor and ripeness, that have not been sprayed with pesticides, and have not been waxed to extend shelf life. They **want** to keep their money **local** and support our small farms and businesses. We in turn shop locally; we buy our farm supplies in Hebron, New Salem, or Mandan. We go to movies, pick up our groceries and eat out at the Café in Hebron. The large chain stores owned from other states do not spend their earnings in North Dakota.

Every sale we make happens with a conversation between **us** the producer and the customer. That doesn't happen at the grocery store. They need lots of product labeling because you often cannot even speak to someone in the department you are shopping in. We feel that

SB 2269
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#7 pg. 2/2 SB2269 David Johnson

labeling for each item is too costly and time consuming; we already are working from dawn to dusk.

Please preserve this freedom for consumers and farmers.

Thank you for your time, and I ask you; please give a **DO NOT PASS** recommendation on SB2269.

Can I answer any questions for you?

David Johnson
3690 74th Ave.
Hebron, ND 58638

Cell phone: 7019340138

#8

S132269

2-7-19

#8 131/1

Testimony for Public Hearing
ND Senate Ag Committee
February 7, 2019

S.B. No. 2269 (Committee) - *An Act Concerning changes to existing Cottage Food Law.*

Dear Ag Committee Members. My name is Mirek Petrovic and I am a farmer and a food business owner in Anamoose. As a local foods consumer and longtime advocate I'm deeply troubled about the proposed changes to our current cottage food law.

Adopting this law two years ago meant big win for thousands of consumers and producers in our state. Those who seek fresh local food items now have the freedom to engage in the most basic human activity on earth which is purchase of the very kind of nourishment they desire and know to be good for them.

After many years of my personal involvement in local foods movement and by attending many conferences sponsored by USDA, FARRMS and many others, I have found that there are four major points people are concerned about:

1. Consumers are seeking products void of industrial additives. There are many additives in commercially made food that educated consumers don't want to ingest such as dyes, preservatives, conditioners and various flavorings.
2. Consumers want to support local businesses, understanding that spending locally keeps resources from draining into big corporations.
3. Consumers want food made by people they know. Local food production carries more integrity, producers and consumers are interacting face to face.
4. Consumers want freedom of choice. It is sad that live in a country where person can choose to have baby aborted on the birthday, but some think we need government regulation on what foods we can buy from one another.

There are always going to be those who will argue that consumers don't have the capacity to make educated decisions in their choices of foods. I believe this argument to be totally wrong and insulting to most North Dakotans. We have the most people over 100 years old in this state and they all got good start in life with cottage foods.

I would like to conclude my testimony on a personal note. Born in 1976 I grew up in communist Czechoslovakia, where all private property including small farms was nationalized in the 1950s. All the farmers including some in my family were forced to put their land into co-ops. Where we had small independent farms grew huge state owned agribusinesses. The quality of food production took a nose dive and so did the health of the population. One thing even the communists did not dare take from the people were the bustling open markets. My mother would take us every Wednesday afternoon to the town square and rather than buying in the state owned store, we got our potatoes, salad greens, nuts, honey, poppy seed cake and eggs at the market. Why? Because we wanted better and fresher food. It is my personal hope, dear members of the Ag Committee, that you will vote no on the S.B.2269 in the spirit of the fine American tradition of Personal Freedom and Free Enterprise.

Thank you for your time and consideration,
Mirek Petrovic
Rugby, ND

February 4, 2019

To: Senator Luick, Chairman of the Senate Agriculture Committee
17945 101st Street SE
Fairmount, ND 58030-9522
Fr: Julie Garden-Robinson, Ph.D., R.D., L.R.D., Professor and Food and Nutrition Specialist
Re: SB 2269 Cottage Food Bill

On the referenced Cottage Food Bill, NDSU Extension remains neutral and this letter is provided for information.

As a food and nutrition specialist with NDSU Extension, I regularly consult with North Dakota food processors, including entrepreneurs with ideas for new products. I assist them with matters related to food safety, food product labeling, nutrition labeling and food processing/preservation. Our Extension agents provide workshops to help people produce and process food safely at home. We also provide research-based recommendations for food sold to the public in various venues.

In recent years, food safety has emerged as an area of concern because of numerous food recalls and foodborne illness outbreaks throughout the U.S. Home-canned food, including salsa, pickles and jellies, can pose food safety risks to the public if the processing and formulations do not meet current research-based recommendations.

In my 20-plus years with NDSU Extension, I have noted an increasing number of calls and emails from food entrepreneurs. At times, my callers have been surprised that many older recipes and internet sources of recipes for canning do not meet current recommendations for acidity level (pH) and/or moisture content/water activity, and can pose a food safety risk.

For example, low-acid foods, such as vegetables and mixtures of acidic/low-acid foods pose the greatest risk for botulism, a potentially fatal form of foodborne illness. Canned food products must be formulated and processed properly to ensure safety. According to the National Center for Home Food Preservation, "if *Clostridium botulinum* bacteria survive and grow inside a sealed jar of food, they can produce a poisonous toxin. Even a taste of food containing this toxin can be fatal." In addition, the Centers for Disease Control and Prevention recommends that any home-canned food that may contain botulism toxin be discarded.

Therefore, in my role I see an increasing need for education for food producers/processors exploring the production and sales of food products. Please feel free to contact me for more information about food safety (701-231-7187 or julie.garden-robinson@ndsu.edu). Thank you.

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10 pg. 1/1

NDLA, S AGR - Johnston, Daniel

From: Ronda Woods <rondawoods8@gmail.com>
Sent: Wednesday, February 06, 2019 3:08 PM
To: NDLA, S AGR - Johnston, Daniel
Subject: SB 2269

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

I am requesting you to issue a DO NOT PASS recommendation on SB 2269.

We oppose this bill.

Matthew and Ronda Woods
701.368.1253

--
Thanks, Ronda

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Senate Agriculture Committee Members,

I urge you to issue a **DO NOT PASS** recommendation on SB 2269.

In the year-and-a-half North Dakota's cottage food law has been in effect not a single case of foodborne illness has been attributed to a producer operating under the cottage food law. The experience in North Dakota matches that of Wyoming, Utah and Maine who have also passed food freedom laws; NO foodborne illnesses have been blamed on a producer operating under those state's cottage food laws either.

SB 2269 hurts the ability of cottage food operators providing safe, nutritious food to the public to make a living.

A recent survey conducted by the Institute for Justice of 775 cottage food producers in 22 states found that half were funded with \$500 or less in start-up capital. Costs for producers of foods SB 2269 would now require licensure and inspection for would drive up the costs of doing business substantially.

Thank you,

Sharon Duhe'
701-629-6129

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2-7-19
#12 pg 1.

I am writing to you to share my experience with North Dakota Food Freedom.

North Dakota Food Freedom has been an encouragement to me. It has meant that I did not have to completely give up what I love doing and sharing with people -- handmade confections, pastries, baked goods, and other sweets.

In early 2017 I fulfilled a dream.....opening a sweet shop that would bring joy to so many and be a place that would give them a break from the stresses of work and everyday life. I had planned on operating that shop until I was no longer physically able and could pass it down to a future generation in my family. But that dream had to be closed just one year later as I was struck with physical ailments that would prevent me from working so much. Not only did that break my heart, but it absolutely crushed me. I had grown to love the people I served in that shop.

North Dakota Food Freedom has given me hope and encouraged me because it means I do not have to completely stop making my sweet creations and sharing them with people. It allows me to make orders on an as-needed basis from home which means I won't have to be on my feet nearly as long as I had been at the shop and can use a tens unit whenever needed to get relief from the sometimes debilitating pain I experience without customers seeing it and offering sympathy. That is important to me as the purpose of my business is to bring joy to and encourage others, not others feel like they need to encourage me.

I have had to take a break from making my sweets to allow my body time to get better, but will be back to it in 2019, just on a more limited basis. This will mean that my spouse will not have to carry the full financial burden of supporting our family. It will also allow me to continue homeschooling my high schooler who asked to be homeschooled her last two years of school.

From a producer's standpoint, there are things I do to insure the safety of my products. This includes, but is not limited to, creating recipes in order from having the least to most amount of potential allergens, keeping my cottage food supplies separate from my family's personal supplies, managing time and temperature controls, and more. These are common sense things for which information is already available through extension agencies and local health agency offices. As such, it is unreasonable to think that there need to be official rules.

From a consumer's standpoint, I have enjoyed many homemade foods at such events as potlucks, wedding receptions, church dinners, retirement parties, birthday parties and that have been purchased at various bake sales and farmers markets as have many of my friends. My children have enjoyed these products for more than two decades and my husband and I have enjoyed them throughout our lifetime. Not once has anyone in my family or any friend ever come down ill or had even the slightest hint of stomach upset from any of the items we have ingested. This reflects that individuals who make cottage foods follow common sense guidelines for homemade goods.

Guidelines already exist for homemade goods. These guidelines can be found at numerous agency offices in our state. They can also be found on numerous websites that belong to certified sources. It does not seem to me that we need to duplicate those guidelines in the form of official rules and regulations, especially considering the absence of illnesses with regard to

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cottage foods.

As someone who has operated both a commercial kitchen and cottage kitchen, I have seen discrepancies between preferences local health departments have conveyed as preferences in my commercial operation and their demands to have some of those preferences be classified as regulations under cottage food laws. I have also seen contradictions. This is clearly over-reach by health and ag departments who want to have control over all things food and grocers who see cottage foods as competition. I am therefore asking that you say "nay" to any proposals for regulations that are outside the scope of the North Dakota Food Freedom Act especially since our governor has already approved and signed that legislation.

Thank you very much for your time and consideration.

Sincerely,

Elizabeth Delgado

Owner

Sincerely Yours Sweets

(pics of my shop are included with this note)

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2-7-19
#13 pg.1

NDLA, S AGR - Johnston, Daniel

From: Michelle & Riley Kuntz <michellelep502@gmail.com>
Sent: Wednesday, February 06, 2019 11:01 PM
To: NDLA, S AGR - Johnston, Daniel
Subject: SB 2269 testimony

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Hello,

We request a do not pass recommendation, in conjunction with a no vote on SB 2269, for the following, very simplified, reasons.

This bill is ridiculous and has little to no forethought, as detailed below. In addition, the primary sponsor has a financial benefit to passing the bill. Even though Senator Klein is a good fella, what happened to integrity?

There is no penalty. Thankfully there is no penalty, since we do not need a food gestapo kicking down the doors of grandma's everywhere in the state for selling a carrot, or a beet, an ear of corn, peas, pumpkins or any other vegetable or fruit other than tomatoes or melons!

People have been selling/buying these products to their neighbors; meat, vegetables, milk, cheese etc. for thousands of years. People are now more cautious than ever when preparing these products, due to increased knowledge about proper preparation. Cottage food producers take these precautions because they eat the same products they sell to other family's and they want their customers to come back. With general free market principles, if you sell a bad product, you do not sell products.

Since the precursor to this bill allowed these types of sales to take place publicly, the DoH has only, maybe, had one instance of problematic food sale. We say maybe, because the DoH, did not even follow through with the investigation to find a basis for the illness. In short, these regulations are unnecessary since the DoH will not even investigate the problem.

When does this nanny regulation stop? Today, we can not sell our extra garden produce? Will the bill sponsors, ND grocery association and the Dept. of Health be happy when we can't even grow a garden? What about wheat, oats maybe?

--
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19.0887.03001
Title.

Prepared by the Legislative Council staff for
Senator Myrdal

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Att. #1 pg. 1/1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2269

Page 5, line 6, remove "raises and"

Page 5, line 19, remove "must be"

Page 5, line 20, replace "Transported" with "If transported, must be"

Page 5, line 20, after "for" insert "washed"

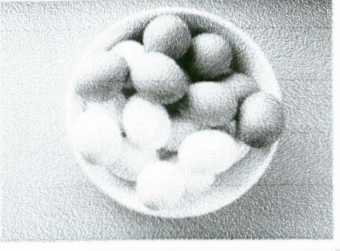


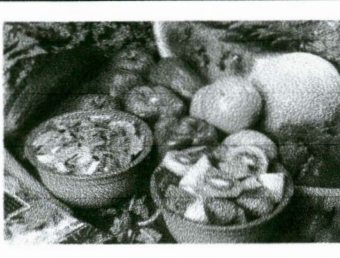



Page 5, line 23, replace "Labeled" with "Must be labeled"

Page 6, line 29, after "For" insert "washed"

Renumber accordingly

NORTH DAKOTA'S COTTAGE FOODS

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2 pg. 1

| FOOD DESCRIPTION | Before 2017 | After Passage of 2017 Cottage Foods Law | IF SB 2269 passes... |
|--|---|---|---|
|  <p data-bbox="436 268 525 306">eggs</p> | <p data-bbox="670 226 893 348">only chicken, up to 3,000 birds</p> | <p data-bbox="954 247 1224 327">all poultry up to 3,000 birds</p> | <p data-bbox="1290 201 1582 369">all poultry, only 1,000 birds, must be labeled and refridgerated</p> |
|  <p data-bbox="436 512 591 550">red meat</p> | <p data-bbox="670 512 872 550">not allowed</p> | <p data-bbox="987 512 1189 550">not allowed</p> | <p data-bbox="1328 512 1529 550">not allowed</p> |
|  <p data-bbox="409 716 640 800">many home-canned foods</p> | <p data-bbox="670 716 901 800">only high acid fruit, jam, jelly</p> | <p data-bbox="1014 747 1146 785">allowed</p> | <p data-bbox="1301 716 1542 800">only high acid fruit, jam, jelly</p> |
|  <p data-bbox="414 936 568 1062">fresh cut fruits & veggies</p> | <p data-bbox="670 999 872 1037">not allowed</p> | <p data-bbox="1014 999 1146 1037">allowed</p> | <p data-bbox="1328 989 1529 1026">not allowed</p> |
|  <p data-bbox="393 1209 624 1377">baked goods, custard (pumpkin, kuchen, etc.)</p> | <p data-bbox="670 1262 872 1299">not allowed</p> | <p data-bbox="1014 1262 1146 1299">allowed</p> | <p data-bbox="1290 1262 1604 1346">allowed, if transported frozen</p> |
|  <p data-bbox="398 1566 568 1604">lemonade</p> | <p data-bbox="670 1577 872 1614">not allowed</p> | <p data-bbox="1014 1577 1146 1614">allowed</p> | <p data-bbox="1328 1577 1529 1614">not allowed</p> |
|  <p data-bbox="353 1860 596 1976">sauces & condiments (non-acidified)</p> | <p data-bbox="703 1881 835 1919">allowed</p> | <p data-bbox="1014 1881 1146 1919">allowed</p> | <p data-bbox="1328 1881 1529 1919">not allowed</p> |

| FOOD DESCRIPTION | Before 2017 | After Passage of 2017 Cottage Foods Law | IF SB 2269 passes... |
|---|------------------------------------|--|--|
| Red meat | Not allowed unless inspected | Not allowed unless inspected | Not allowed unless inspected |
| Whole, fresh fruits & vegetables | Allowed | Allowed | Allowed |
| Whole, fresh fruits & vegetables for restaurants | Varied by local health unit | Allowed | Could vary by local health unit |
| Eggs | Only chicken, up to 3,000 birds | All poultry up to 3,000 birds | All poultry, only 1,000 birds Must be labeled & refrigerated |
| Pickled eggs | Not allowed | Allowed | Not allowed |
| Up to 1,000 head of home grown poultry | Only farm sales, includes products | Products sold on farm, farmers market | Doesn't include products, increased labeling |
| Home-canned foods | Only high acid, fruit jam, jelly | Allowed | Only high acid, fruit jam, jelly |
| Fresh cut fruits & Vegetables | Not allowed | Allowed | Not allowed |
| Dehydrated fruits & vegetables | Not allowed | Allowed | Allowed if grown by operator; no tomato or melon. |
| Frozen whole or cut fruits & Veg | Not allowed | Allowed | Allowed if grown by operator; no cut melon |
| Fresh processed foods (salsa, pesto) that are refrigerated and not canned | Not allowed | Allowed | Not allowed unless frozen |
| Baked goods, non-custard | Allowed | Allowed | Allowed |
| Baked goods, custard (pumpkin, kuchen) | Not allowed | Allowed | Allowed if transported frozen |
| Chocolated-dipped strawberries | Not allowed | Allowed | Allowed |
| Acified, fermented fruit/veg | Allowed | Allowed | Allowed |
| Garlic & Oil Mixtures | Not allowed | Allowed | Not allowed |
| Lemonade | Not allowed | Allowed | Not allowed |
| Kombucha | Not allowed | Allowed | Not allowed |
| Freezer fruit jams | Not allowed | Allowed | Allowed |
| Dry herbs/dry herb blends | Allowed | Allowed | Allowed |
| Dry seasoning mixes | Allowed | Allowed | Allowed |
| Dry baking mixes | Allowed | Allowed | Allowed |
| Dry dip mixes | Allowed | Allowed | Allowed |
| Dry soup mixes | Allowed | Allowed | Allowed |

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2-13-19
#12 pg. 2

| | | | |
|---------------------------------------|---------|---------|-------------|
| Roasted coffee beans or ground coffee | Allowed | Allowed | Allowed |
| Dry noodles | Allowed | Allowed | Allowed |
| Legumes | Allowed | Allowed | Allowed |
| Tree nuts (coated or not) | Allowed | Allowed | Allowed |
| Honey, molasses, maple sugar | Allowed | Allowed | Allowed |
| Vinegar & flavored vinegar | Allowed | Allowed | Allowed |
| Sauces & condiments, acidified | Allowed | Allowed | Allowed |
| Sauces & condiments, non-acidified | Allowed | Allowed | Non-allowed |

SB 2269
 2-13-17
 #12 pg. 3

Good morning Chairman Johnson and members of the House Agriculture Committee. My name is Julie Wagendorf, Director of the Division of Food and Lodging within the Department of Health. I am here to support and provide information on Senate Bill 2269 that clarifies the laws and regulations for cottage food production and sales.

North Dakota Century Code Section 23-09.5 defines a cottage food product as "baked goods, jams, jellies, and other food and drink products produced by a cottage food operator." For any cottage food operator preparing cottage food products in a home kitchen, a license and inspection is not required by the Department of Health.

The concern with the current cottage food law is the level of confusion over the definition and interpretation of what "other food and drink products" are. The Department of Health supports the language in SB 2269 that offers further clarification, including the amendments made to the bill in response to the public testimony given during the Senate Agriculture Committee hearing. Following my testimony, I can review these sections of the bill, as well as the attached handout listing cottage food products being proposed by the bill.

During the 2017 legislative session, the Department offered support of HB 1433 regarding direct producer-to-consumer sales of certain food products defined as 'cottage food products' and supported a law that could be administered uniformly throughout the state.

Since the law was enacted, there has been confusion related to the intent of this law. We've received questions about whether the law is intended to allow for all kinds of food and drink, if the law intended to permit home-based catering and home-based restaurants, and if the intent was to dismantle and negate mobile food truck and temporary food events from licensing requirements. These are examples of food establishments defined by existing chapters of state law that conflict with the types of transactions prohibited in the current cottage food law. Section 2, Subsection 4 of NDCC 23-09.5 states that a cottage food operator may not sell or use food in any food establishment or food store because these

require a license to operate. Yet, we have received several reports of this occurring since the cottage food law was enacted. The most common misunderstanding is the sale of meat and meat products and whether it is permitted under the current cottage food law when really meat products are regulated.

Existing food laws and regulations require food establishments to be licensed and inspected based on the types of foods they have that require time and temperature control for safety, and how food is to be stored, prepared, served, or sold. Exclusions from licensure need to be referenced so that chapters in law do not contradict each other. SB 2269 offers a clear separation of cottage food operations from licensed food establishments.

As of 2018, 49 states have enacted cottage food laws. Most state cottage food laws set criteria that define cottage food products. Aside from Wyoming, SB 2269 offers North Dakota the fewest restrictions on unregulated cottage food products.

The Department of Health is in support of the cottage food law as presented in SB 2269 and we recognize the benefit this can serve for small, start-up food businesses. At the heart of every vibrant community are businesses and special events that keep the local economy thriving. The food industry continues to grow and change with consumer and market demands and we recognize that food regulations also need to change and adapt.

We're happy to work together on a solution that builds and adds value to our state's integrated food system while preserving public health and safety for the consumers we serve.

Cottage Food Products Authorized Under SB 2269

- Baked goods such as breads, quick breads and muffins, lefse, cookies, no-bake cookies, biscuits, crackers, donuts cakes, pastries, candies and confections (made without alcohol) such as caramels, chocolates, fudge, brittle, hard candy, and cotton candy, fruit pies (including pecan pie) and fruit empanadas such as apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants or a combination of these fruits.

- Time and temperatures for safety (refrigerate) baked goods when labeling and storage requirements are met, such as: pumpkin pie, sweet potato pie, cheesecake, custard pies, crème pies, meringue pies, cakes with glaze or frosting that requires refrigeration (e.g., cream cheese frosting), and pastries with fillings or toppings that require time and temperature control for safety.
- Fruit jam, fruit jelly, and fruit preserves including, but not limited to: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants, or a combination of these fruits.
Note: Vegetable and other non-fruit-based jams and jellies such as rhubarb, tomato, and pepper are not permitted unless acidified to pH equilibrium of less than 4.6.
- Fruit butters including apple, apricot, grape, peach, plum, quince, and prune. Pumpkin butter, banana butter, and pear butter are allowed if the equilibrium pH is less than 4.6.
- Freezer fruit jams
- Chocolate covered pretzels, marshmallows, graham crackers, Rice Krispies treats, strawberries, pineapple, bananas, or other non-perishable foods that do not require time and temperature control for safety.
- In-shell eggs (1,000 bird exemption) if properly labeled.
- Raw Poultry products (1,000 bird exemption) if properly labeled.
- Acidified or fermented fruits or vegetables with a pH equilibrium of less than 4.6, including pickled fruits and vegetables such as pickles, salsa, sauerkraut, kimchi, fruit chutney, applesauce.
- Cut Leafy greens that are dehydrated or blanched and frozen. Fresh cut leafy greens are not permitted for sale.
Note: "Cut leafy greens" means fresh leafy greens where leaves have been cut, shredded, sliced, chopped, or torn and does not include the 'harvest cut' at the stem or stalk. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

- Cut fruits and vegetables if grown by the cottage food operator and dehydrated (includes freeze dried) or blanched then frozen; if properly labeled. Dehydrated tomato or melon and frozen cut melon are not permitted for sale.
- Dry herb/dry herb blends
- Dry shelf-stable products, such as seasoning blends, baking mixes, dip mixes, soup mixes and tea blends.
- Roasted coffee beans or ground roasted coffee
- Dry pasta
- Tree nuts (coated and uncoated)
- Legumes
- Honey, molasses, sorghum, maple syrup, maple sugar
- Flour, grains, dry cereal, popcorn, popcorn balls, granola, granola bars, dry mixes
Note: Dry bulk mixes sold wholesale can be repackaged into a cottage food product. Similar items already packaged and labeled for retail sale cannot be repackaged and/or relabeled.
- Vinegar and flavored vinegars
- Sauces and condiments, including barbeque sauce, hot sauce, ketchup, or mustard where the equilibrium pH level has been reduced to 4.6 or less and verified using a calibrated pH meter.

Noteworthy:

Whole, uncut fruit and vegetables harvested and packed for sale at produce stands/farmers markets are not considered 'cottage foods' because they are not covered under the ND Food Code as retail food sales requiring a food license. Whole, uncut fruits and vegetables which are allowed for sale.



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www.grandforksgov.com/publichealth

TESTIMONY ON SENATE BILL 2269

House Agriculture Committee
Representative Dennis Johnson, Chair
Grand Forks Public Health
March 22, 2019

Chairman Johnson and Members of the House Agriculture Committee:

The Grand Forks Public Health Department supports SB 2269 as passed by the Senate. This bill provides needed distinctions regarding what products are cottage foods exempt from licensing and inspection. It also identifies necessary safe food handling, labeling, and consumer notifications for these foods.

The ambiguity of the cottage law has led to confusion for both the cottage food industry and regulatory agencies as to what foods and types of services are allowed. As a local public health agency holding a memorandum of understanding for food inspection with the Department of Health, we sought clarifications regarding the law. Stakeholders participating in a cottage food workgroup spent hours discussing and helping draft rules that would provide clarity. Senate Bill 2269 updates cottage food law providing the needed clarifications that may otherwise require rulemaking.

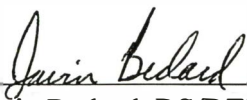
The Centers for Disease Control and Prevention estimates that 1 in 6 people get sick annually from contaminated food or drink. Many people do not report mild or self-limiting gastrointestinal symptoms and fewer still go to the doctor and have a stool sample taken to aid in identifying outbreaks. To be reported as a foodborne illness outbreak, multiple parties would need to report illness and an investigation conducted to identify a common food or common exposure. We often do not hear of many foodborne illnesses due to underreporting. Recognizing that there are inherent risks to any food operation and having safety controls, such as limiting foods to low risk types that can reasonably be produced safely in domestic settings, is prudent in preventing illnesses. It would be regrettable to not address inherent risks to food production until illness or death occurs.

The most common risk factors contributing to foodborne illness include: improper food holding temperatures, improper cooking temperatures, contamination of utensils or equipment, poor food-worker health or hygiene, and contamination of sourced foods. Cottage food producers are not immune from these causes and enhanced challenges can include: small working spaces,

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shared use spaces, and competing priorities for use of space which enhance the risk of cross contamination; inability to exclude ill persons from food production areas; and limited equipment capacities for production, storage, cooking, cooling and cold holding necessary to control for bacterial growth.

This bill takes a balanced approach and supports the unregulated production of cottage foods that are generally lower risk for foodborne illness that can be reasonably produced in domestic settings. Individuals wanting to expand to more complex and higher risk food products have the freedom to do so, it just involves planning adequate equipment, capacities, and controls for foodborne illness risk factors and having these reviewed inside the inspected food system.



Javin Bedard, RS/REHS, EHP
Environmental Health Manager
Grand Forks Public Health Department

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TESTIMONY – SB 2269 Opponent

By LeAnn Harner, Mandan, ND
goat@harnerfarm.net
701-516-0707

I'm not a cottage food producer, but did help with this legislation as it went through the 2017 Legislature and served on the Cottage Foods Working Group. I agree with the sponsor's goal of more clarity in this law; but not at the expense of restricting the type of foods and drinks sold. I think there is an opportunity for amendments which will further clarify the law and alleviate food safety concerns. I'll discuss those in a moment.

Let's first set the stage, so you know why I'm proposing amendments.

I've gotten to know many of the cottage food producers. They're a diverse group. Often entire families get involved making these products and participating in the growing, processing, labeling and sales. They can be a nice source of extra income, while working together as a family. Some cottage food producers are young people coming back to the family farm. There's not enough room or income unless a side business is developed and farmers markets and cottage foods can create that opportunity. Some producers are simply people who love to cook or bake or garden or gather and like to share those fabulous family recipes with others. Quite a few of these producers have worked in restaurants or the food industry, but circumstances changed and now they need to work from home.

One of the people I wish you could meet is Brenda Daniel from Ray. Brenda started baking and decorating cakes because she couldn't afford to buy one for her son's birthday. Her family encouraged her to start a business, but Brenda didn't because of complicated rules. After passage of the 2017 law, Brenda put some ads on Facebook and got so many orders that last December she opened a cake shop in the local mall. Because she does it all without employees, Brenda was unable to attend the hearing today. But her efforts show exactly what we were hoping would happen when the first legislation was passed.

Let's be perfectly clear. NO cottage food producer and NO ONE in this room wants ANYONE to get sick from any food or drink product; regardless of where it was made. Many of these producers have told me, "If I ever made anyone sick, I'd quit." They have a connection with their customers and delight in repeat business and knowing they've made someone happy with their product. While a large company may be able to recall products, a cottage food producer knows any illness will kill their business. Our producers work hard to make the safest products possible.

Cottage foods and drinks are handmade; often with lots of labor per item because we're making small quantities. These are not cheap products. If you purchase jams, jellies, pickles, cake, bread, etc. at a farmers market, you'll probably pay considerably more than you do at your local store. Consumers want these products because they're unique and support a local entrepreneur.

Remember, not all transactions take place at farmers markets in the middle of July. Many people sell out of their homes, at craft shows or other venues throughout the year. As I go through suggested amendments with you, please bear this in mind.

Let's walk through the bill and I'll reference specific places in 2269 that I believe need to be amended in order to bring it in line with what this committee passed two years ago as well as some good changes:

- Page 1, Item 5. Line 23 – The words "and drink" have been struck out. That means that only certain foods could be sold and no drinks. I've heard the Health Department say they don't regulate "kids' lemonade stands." With this change, I guess if I want to sell lemonade at a farmers market, I need to find a kid to run the stand. Remember, just two years ago, you approved "drinks." In fact, prior to the 2017 law, the ND Department of Ag in their Farmer's Market Handbook listed black coffee, hot teas, iced teas, and lemonade as "allowed beverages." We need to include "drinks" in the definition. This does NOT include alcoholic beverages, which are addressed elsewhere.

- Page 1, Item 5, Lines 23-24 – I want to call your attention to this sentence “The term does NOT include whole, uncut fresh fruits and vegetables.” If you don’t cut the fresh fruit or vegetables, they aren’t cottage food. That’s an important distinction later on.
- Page 2 – Lots of definitions and rewording. It replaces the phrase “home consumption” with “non-commercial consumption.”
- Page 3 – Mostly rewriting what is already in code. I appreciate line 12 that regulation is inserted and line 13 where packaging is included so there’s extra clarification that neither a state agency nor local health district may write rules.
- Page 3, Item 2, Lines 21-23 – I appreciate the clarification of all the places where transactions may take place.
- Page 4, Item 4, Lines 4-6 – There’s important wording here about whole, unprocessed fruits and vegetables that’s being struck out.
 - Prior to 2017, some local health districts required an inspection or other hoops before a producer could sell fresh produce to a restaurant or retailer. If this wording is deleted, it opens the door for that to happen again. Please note keeping these lines in code does NOT make fresh, uncut fruit and vegetables a cottage food. It simply clarifies that those items can be sold to a retail store or restaurant. Because it’s in this section of Century Code, local jurisdictions are prohibited from making extra rules for these producers.
- Page 4, Lines 21-24 – I appreciate the addition of clarifying language that producers can use the internet to advertise. Previous wording was a bit confusing.
- Page 5, Line 11 – All home canned products should be allowed. Yes, there are food safety concerns, but cottage food operators have a stellar record of food safety.
 - To alleviate concerns about the safety of low acid, home-canned foods, we would support an amendment which requires low acid foods to be pressure canned. Many of the producers I talk to already use pressure canning since it faster than other methods.
 - Further, we would support an amendment requiring producers to complete a food safety course and produce a certificate of completion when asked. Many of our producers have already attended these classes and use that completion as a marketing tool.
- Page 5, Line 16 – We believe refrigerated products should be allowed and not just those which can be transported frozen.
 - At the very least – Line 20 needs to be amended to allow for the customer to pick up fresh baked goods like cream pies unfrozen.
 - We believe Line 20 should be further amended to allow for the transport of refrigerated items at 40 degrees or cooler. This is in line with food safety guidelines and, if a cottage food operator wishes to make arrangements to handle refrigerated product safely, we should allow them to do so.
 - Every time you make a major change to the temperature of a product, you change the texture. If we require our cottage food operators to complete a food safety course, they can judge for themselves what products fit their abilities. Then their customers will also judge the products and decide if they’re worth purchasing.
- Rest of Page 5 – Now they’re picking “good” and “bad” foods. When you review incidents of foodborne illness in North Dakota, you don’t see these foods causing problems and especially not from home use. Again, we believe that, if the producers are trained, they can decide what they wish to sell and buyers can decide what they wish to purchase.

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- Page 6, Section 4 – Much of what you see as far as warning, etc. are already in code. Cottage food operators have to tell the public this is made in an uninspected kitchen with a sign at the point of sale or with individual labels. We have to provide safe handling instructions. When a cottage food operator sells something, there's a discussion with the consumer. The products aren't just sitting on shelves waiting to be picked up. There's a dialogue. Much of the information is transmitted as part of the sale.
- Page 7, New Section 6 – We would propose adding a section to require cottage food operators complete a food safety class before selling food. They would need to find a class that provided a completion certificate that could be produced upon request.
 - We've actively promoted food safety classes. NDSU Extension offers them. Local health districts and sometime the State Health Department offers classes. Some farmers markets provide classes for their members. There's also a plethora of online classes. These takes three hours or so to complete and the cost of many range from free to \$10 or \$20. People I know who have taken these classes say they learn something every time they attend one.
 - Point of Clarification – Because uncut, fresh, whole fruits and vegetables are not cottage foods, those selling ONLY uncut, fresh, whole fruits and vegetables are not cottage food operators and would not be required to take a food safety class. (Though I know many of these individuals who have thoroughly studied food safety.) If they cut the fruits and vegetables, then they become a cottage food operator and would have to take a class.

I know you'll hear from several cottage food producers this morning. They can explain more specifics about their business and what the 2017 law has meant to their family. I'm sure you have questions for me. First, let me ask you – have you ever been to a restaurant and read an advertisement for "homemade" pie? Sure you have! I would venture to guess that you even start to salivate at the thought. If the sign says something like "Grandma's recipe," it's even better. We know this isn't really homemade, but just the thought makes us hungry. This bill addresses homemade food made in real homes by real people we meet when we purchase their products.

We're not asking – or expecting – to feed the world. We just want to feed our communities and our state. I am asking this committee to amend SB 2269 and hold the restrictions at bay. Please allow the energy and enthusiasm of these producers to remain unleashed so they can work and expand their enterprises.

Without these amendments, I'd ask for a Do Not Pass on this legislation.

With these suggested amendments, I can enthusiastically support the bill.

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AMENDMENTS TO SB 2269

SB 2269 shall be amended as follows:

Page 1, line 23, Remove overstrikes from "and drink"

Page 4, lines 4-6, Remove overstrikes from "Except for whole, unprocessed fruits and vegetables, food prepared by a cottage food operator may not be sold or used in any food establishment, food processing plant, or food store."

Page 4, line 20, Insert "5." and renumber accordingly.

Page 5, line 15, after "b." insert "Low acid products are processed using a pressure canner; or

Page 5, line 15, insert "c. Dehydrated", overstrike "the".

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, after "maintained" delete "frozen" and insert "at a temperature of forty degrees Fahrenheit or less"

Page 5, line 26, delete "5. Garlic in oil".

Page 5, line 27, delete "6. Seed sprouts of any variety".

Page 5, lines 28-29, delete "7. Cut leafy greens, except for leafy greens grown and dehydrated or blanched and frozen by the cottage food operator".

Page 5, lines 30-31, delete "8. Fresh cut or cooked fruits and vegetables, unless the fresh cut fruits and vegetables are grown by and are dehydrated by or blanched and frozen by the cottage food"

Page 6, lines 1-2, delete "operator. Fresh cut fruits and vegetables do not include fresh tomato or melon dehydrated tomato or melon, or blanched and frozen cut melon".

Page 6, line 24, after "Handled" insert "Refrigerated or"

Renumber accordingly.

SECTION 6. A new section to chapter 23-09.5 of the North Dakota Century Code is created and enacted as follows:

"Food Safety Class.

A cottage food operator will complete a food safety class before selling food under this chapter. The cottage food operator must be able to produce a certificate of course completion upon request."



INSTITUTE FOR JUSTICE

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Testimony in opposition to SB 2269, North Dakota House Agriculture Committee

Jennifer McDonald, Senior Research Analyst, jmcdonald@ij.org

Good morning, Chairman Johnson and members of the committee. Thank you for the opportunity to testify before you this morning. My name is Jennifer McDonald and I am a senior research analyst at the Institute for Justice. I hold a master of public administration from the London School of Economics and Political Science. I have also published multiple studies on the cottage food industry and have testified in favor of expanding cottage foods to state legislatures across the country.

We are opposed to SB 2269 in its current form because it will needlessly restrict the ability of North Dakotans to operate their home-based food businesses.

IJ is the public interest law firm that represented a group of home bakers in their recent successful challenge to Wisconsin's unconstitutional ban on the sale of home-baked goods and is currently representing New Jersey home bakers in a similar lawsuit. When North Dakota passed its food freedom law, you became a national leader in the movement for food freedom. We now urge the Legislature not to hamstring these newly-legal home-based businesses with unnecessarily restrictive regulations, for two reasons:

1. Homemade foods are just as safe as commercially-produced foods.
2. Homemade food businesses provide their owners with crucial income, particularly to women living in rural areas.

First, homemade foods are extremely safe. Cottage food producers take immense pride in the quality of their products. No cook or baker wants someone to get sick from their products because a reputation for quality and safety is a homemade food producer's greatest asset. There is also no reason why homemade food items are a greater risk to public health than those produced commercially. Homemade foods bypass third-party processing plants and wholesalers, reducing the opportunities for contamination. The individual attention that cottage food producers give to each item they make ensures quality and safety—certainly more than commercially produced products receive.

The experts agree. Thomas Montville is a microbiologist, a professor of food science at Rutgers University, and an expert on food safety. He has testified in court multiple times that cottage foods are scientifically just as safe as commercially produced food. And the North Dakota Department of Health has even publicly stated that there have been no reports of foodborne

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901 N. Glebe Road, Suite 900 Arlington, VA 22203 (703) 682-9320 (703) 682-9321 Fax
general@ij.org www.ij.org

illnesses as a result of your food freedom law.¹ There have also been no complaints of foodborne illness associated with food freedom laws in Utah and Wyoming—the other two states with laws similar to yours. This result is particularly striking for Wyoming. Not only has the Wyoming Food Freedom Act been in effect much longer than North Dakota’s law (since March 2015), it is far more permissive, allowing unregulated direct-to-consumer sales of raw milk, rabbit meat, and farm-raised fish, in addition to the foods North Dakotans are currently free to sell. Given this unblemished track record, there is no need to impose such severe regulations on homemade food businesses.

Second, homemade food businesses are invaluable to their owners. In 2017, I authored the nation’s first comprehensive study on cottage food businesses.² I surveyed 775 cottage food producers across 22 states in order to glean insight that will help guide policy decisions around how this industry should be governed. My research shows that cottage food businesses provide an important path to entrepreneurship and financial independence for their owners, who are often lower-income women living in rural areas. Extra income from a cottage food business can be particularly helpful to lower-income households like these.

Unfortunately, my research also suggests that restrictive cottage food laws likely stifle business creation and expansion in rural communities. And when I surveyed newly-legal cottage food businesses in Wisconsin last year, many respondents confirmed those findings. They also told us how important the income from their cottage food businesses is to them: Many said the income allows them to provide for their children and get out of debt, while one even said her business allowed her to stay in her home and gave her the ability to afford to purchase health insurance.³

This should be of particular concern to you because the North Dakota Farmers Market and Growers Association estimate that a majority of the state’s 600 farmers’ market vendors operate under the food freedom law.⁴ Understanding how vital cottage food businesses are for so many North Dakotans, I urge you to vote no on SB 2269. This bill is a solution in search of a problem. It will have no effect on public health, but it could mean the difference between just getting by and financial freedom for lower-income farmers, retirees and homemakers.

Thank you for your time. I am happy to answer any questions you might have.

¹ Mercer, M. (2019, Mar. 19). As home-cooked cottage-food industry grows, states work to keep up. *Pew Charitable Trusts*. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/19/as-home-cooked-cottage-food-industry-grows-states-work-to-keep-up>

² McDonald, J. (2017). *Flour power: How cottage food entrepreneurs are using their home kitchens to become their own bosses*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2017/12/Cottage-Foods-Report-Sep-2018.pdf>; McDonald, J. (in press). The relationship between cottage food laws and business outcomes: A quantitative study of cottage food producers in the United States. *Food Policy*. <https://doi.org/10.1016/j.foodpol.2019.01.012>

³ McDonald, J. (2018). *Ready to roll: Nine lessons from ending Wisconsin’s home-baking ban*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2018/10/Wisconsin-Home-Bakers-FINAL.pdf>

⁴ Sibilla, N. (2019, January 22). Hundreds of homemade food businesses flourish under state food freedom laws. *Forbes.com*. <https://www.forbes.com/sites/nicksibilla/2019/01/22/hundreds-of-homemade-food-businesses-flourish-under-state-food-freedom-laws/#61b2ca632226>



READY TO ROLL

Nine Lessons from Ending Wisconsin's Home-Baking Ban



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Cover image: From left, Wisconsin home bakers and IJ clients Dela Ends, Lisa Kivirist and Kriss Marion

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READY TO ROLL

Nine Lessons from Ending Wisconsin's Home-Baking Ban

by Jennifer McDonald

November 2018

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In February 2018, we shared a survey in a Facebook group for Wisconsin home bakers asking members to tell us about their businesses and what their newfound ability to sell home-baked goods has meant to them.

Results demonstrate the near-immediate impacts of positive legal and policy reforms.



INTRODUCTION

All across the country, Americans are using their home kitchens to prepare food for sale in their communities. Together, they make up the small but growing homemade, or “cottage,” food industry. Research shows cottage food businesses are important to their owners, offering much-needed flexibility and financial support and serving as a creative outlet for farmers, homemakers and others with a passion for cooking or baking.¹

Most states have “cottage food laws,” which regulate the sale of homemade foods. While the specifics vary from state to state, most cottage food laws restrict the types of homemade foods that may be sold, with most allowing the sale only of certain shelf-stable foods, such as baked and canned goods not requiring refrigeration.² Research suggests such restrictions may hinder entrepreneurship.³

Now, a recent change in Wisconsin law provides an opportunity to examine what it can mean for cottage food entrepreneurs when they are allowed to sell homemade foods that were previously prohibited.

Until September 2017, Wisconsin’s cottage food laws made it legal to sell homemade jams, pickles, popcorn, honey, maple syrup and raw apple cider, but not home-baked goods, such

as cookies, cakes and muffins. Thanks to a lawsuit brought by three Wisconsin home bakers and the Institute for Justice, the home-baking ban was declared unconstitutional, leaving all Wisconsinites free to bake their cakes and sell them, too.⁴ Within just a few short months, Wisconsin’s home bakers were on a roll.

To find out what the end of the home-baking ban has meant for Wisconsin home bakers, we went to the source. In February 2018, we shared a survey in a Facebook group for Wisconsin home bakers asking members to tell us about their businesses and what their newfound ability to sell home-baked goods has meant to them. Seventy-nine home bakers responded to our survey.⁵

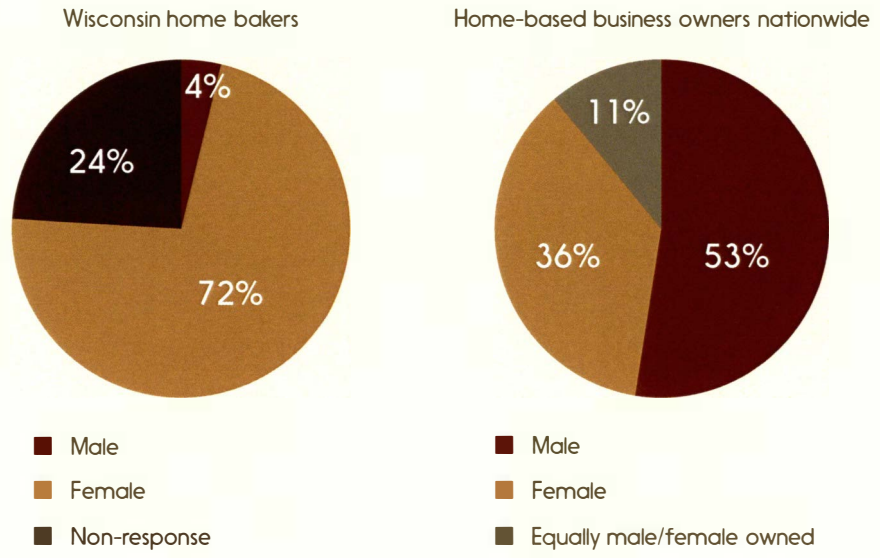
Most of the respondents were women—many of them homemakers—who have started selling their baked goods from home in order to earn much-needed extra income for their families. Many hope to one day open their own commercial bakeries. While Wisconsin’s new rules⁶ are fairly narrow—they allow the sale only of homemade foods that do not require refrigeration—these results demonstrate the near-immediate impacts of positive legal and policy reforms.

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NINE KEY FINDINGS

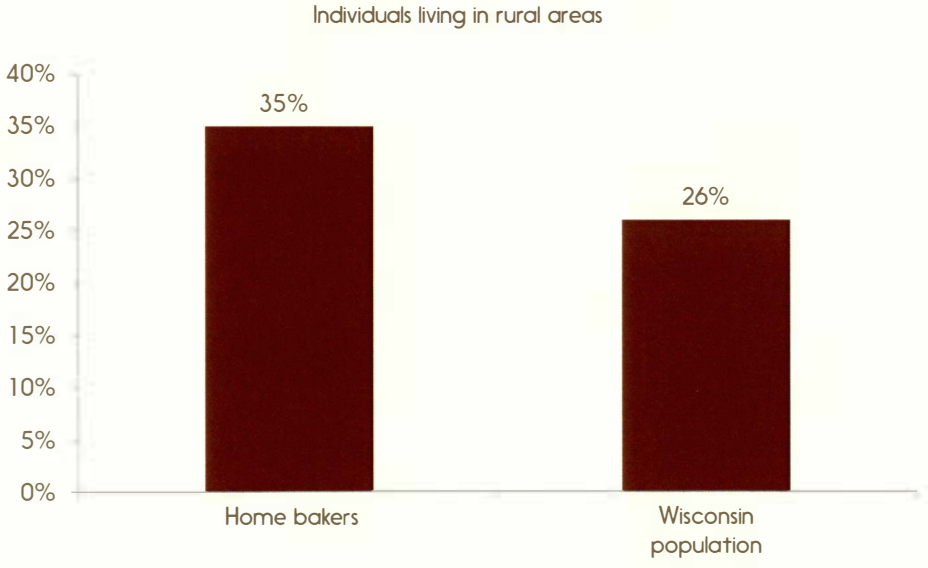
Finding 1:

Women represent a greater share of Wisconsin home bakers compared to America's home-based business owners more generally.⁷ The newly legal industry provides an attractive avenue to entrepreneurship for women.



Finding 2:

Survey respondents are slightly more likely to live in rural communities than the general Wisconsin population.⁸ Comments from bakers suggest a particular need for locally produced baked goods in rural communities with fewer accessible bakeries and other food stores.



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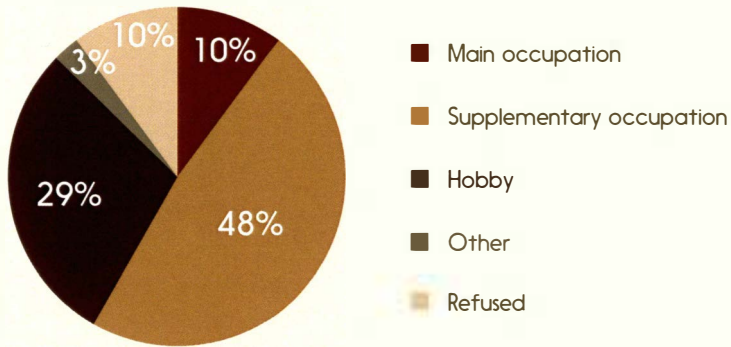
"[The ability to sell home-baked goods is] an opportunity to bring extra income into our family and provide desserts to the people in our small rural town [who] otherwise have only a gas station or small grocery store to purchase less than desirable desserts from."



Finding 3:

Most home bakers view their businesses as a supplementary occupation or hobby.

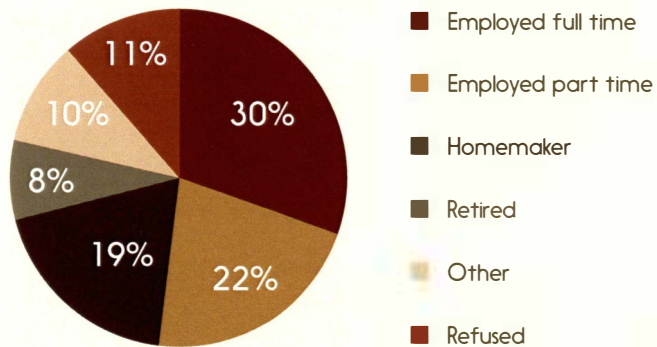
How would you describe your home-baking business?



Finding 4:

Home bakers tend to be employed full or part time at other jobs or identify as homemakers.

When not working on your home-baking business, are you ... ?



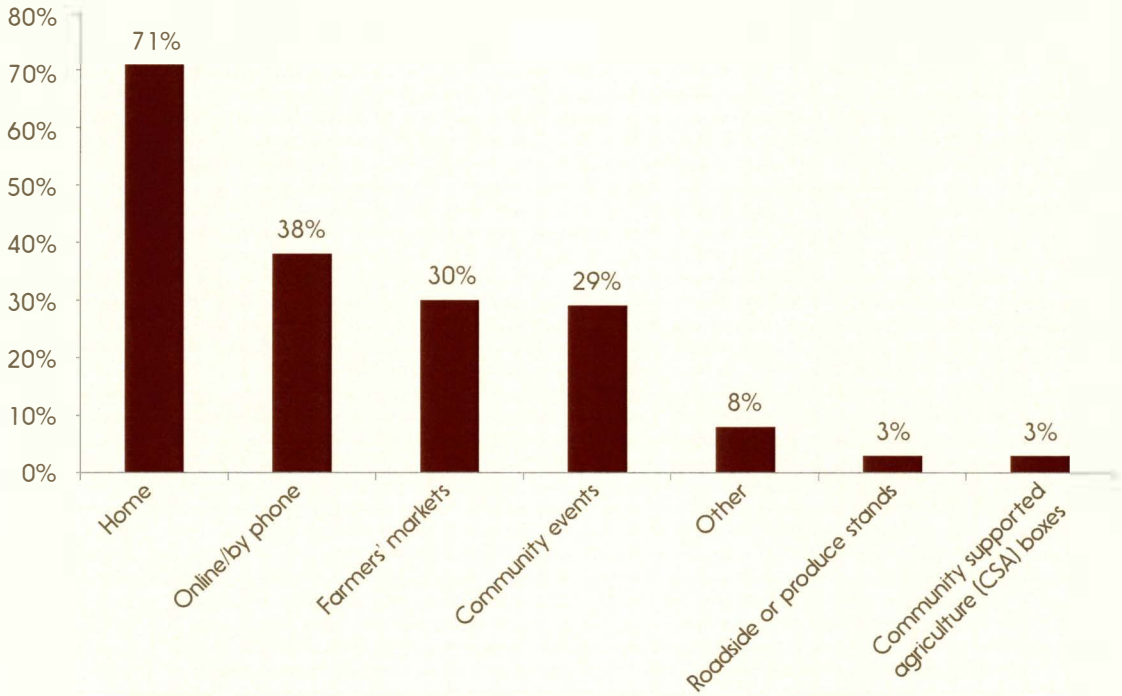
Note: This question was asked only of those respondents who indicated home baking is not their main occupation.

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Finding 5:

**Most Wisconsin home bakers sell their goods from home.
This could change with time as new businesses grow.⁹**

From what types of venues or locations do you typically sell?



Note: Percentages do not add up to 100 because bakers could select more than one response.



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Finding 6:

Wisconsin home bakers report their businesses allow them the flexibility to care for their children and families while still earning income at home. And while the income home-baking businesses provide is seemingly small—respondents report median monthly sales of \$200¹⁰—many home bakers tell us it makes a big difference to their financial well-being.

"[Being able to sell home-baked goods] gave me the freedom to quit my job outside the home and focus on growing this home-based business, which allows for a more flexible schedule so that I can help care for my three young children."

"Lifting the ban has allowed me to do something I love and to help other people have enjoyable treats while working around my family's schedule and being able to supplement our family's income, which came at a perfect time since my husband's hours were cut at work. Knowing that I can make up that extra \$1,000 of lost income by doing something I love and not having to worry about someone else's schedule has been a big impact."

"[The end of the ban] means that I can afford to stay in my home, sleep a little better at night, buy food from my fellow farmers, afford [health insurance], have a car ... It means a lot."

"I lost my job of 14 years days before this ban was lifted. If it [hadn't been] lifted, I can't tell you what would have happened to my family. I was able to make enough to cover expenses until I was able to find another job. Now I am able to work part time and bake."

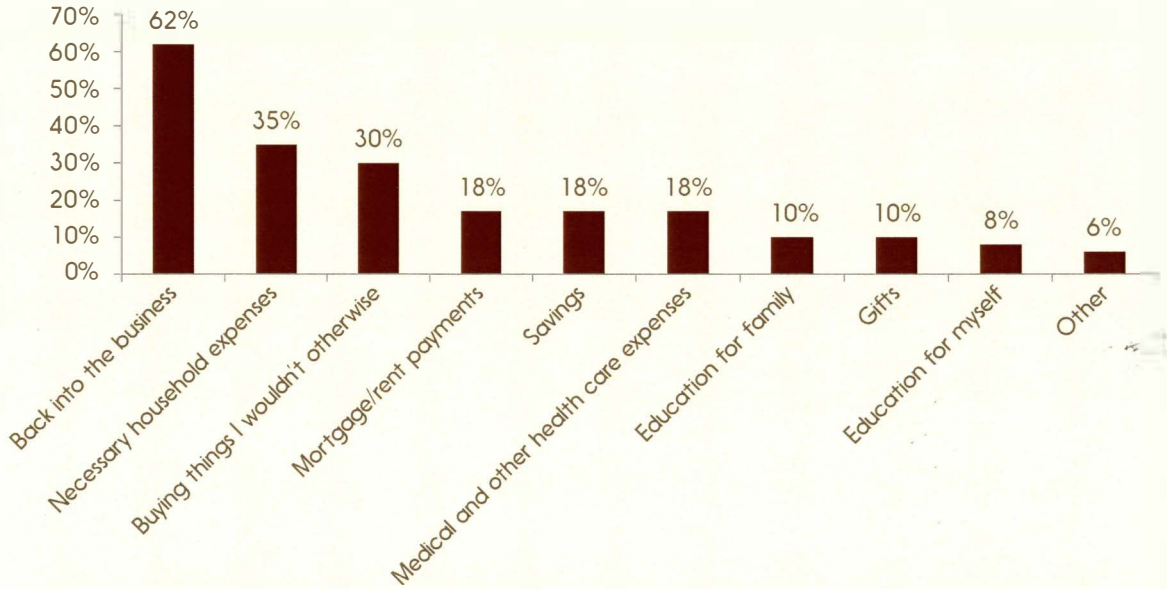
"[Being able to sell home-baked goods] has allowed me to provide for my kids without credit card debt."

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Finding 7:

Most home bakers put their earnings back into their businesses, and many use the extra income to cover necessary household expenses and even to supplement their retirement.

Do you spend any income from your home-baking business on any of the following?



Note: Percentages do not add up to 100 because bakers could select more than one response.

"Two weeks after the ban was lifted we were able to enroll our kids in lessons we could not afford before."

"[Baking] has provided me the ability to make some much-needed extra income to supplement my retirement."

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Finding 8:

Home-baking businesses offer other, perhaps less tangible but no less significant, benefits that fulfill important personal needs, from providing an artistic outlet to helping manage difficult medical conditions.

"It has led me to finding my passion again... Baking relaxes me and helps me not hav[e] to medicate for my anxiety and depression."

"It gives me freedom to do what I'm passionate about."

"I am able to share my art."

"[I am] able to live a dream that wasn't possible before."

"I was able to work and earn money [while] trying to do school and having health issues."

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Finding 9:

Many home bakers plan to ramp up operations and to do so by renting a commercial kitchen or opening a brick-and-mortar bakery.

"I've worked in commercial bakeries throughout my career and always wanted to have my own business. Lifting of the home-baking ban has allowed me to take the first step without investing tons of money up front and has been [a] great learning opportunit[y] to think like a business owner."

"[The lifting of the ban has] enabled me to sell and really see if there is a demand for my product."



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CONCLUSION

The 2017 ruling declaring Wisconsin's home-baked good ban unconstitutional was a welcome—and long overdue—change for home bakers throughout the state. Indeed, although sales so far are modest, the income home-baking businesses provide is already making a real difference in the lives of many home bakers and their families.

At the same time, Wisconsin's cottage food regime is still fairly restrictive in that it allows the sale only of baked goods and other homemade foods not requiring refrigeration. This leaves items like cheesecakes and cream-filled desserts off the menu. Expanding the types of homemade foods that may be sold would likely help home bakers and other cottage food entrepreneurs grow their businesses even more.

To that end, Wisconsin legislators should consider taking recent reforms further. For models, they can look westward to Wyoming and North Dakota, whose "food freedom laws" allow the virtually unrestricted sale of most homemade foods, including many requiring refrigeration.¹¹ They should also consider the Institute for Justice's model Food Freedom Act,¹² which would greatly expand opportunities for home-based food entrepreneurs to produce—and consumers to access—delicious homemade foods.

These survey results illustrate the near-immediate positive impacts of expanding food freedom on the lives and livelihoods of real people. Expanding this freedom still further would likely open up even more opportunities for budding cottage food entrepreneurs.





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ENDNOTES

- 1 McDonald, J. (2017). *Flour power: How cottage food entrepreneurs are using their home kitchens to become their own bosses*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2017/12/Cottage-Foods-Report-Sep-2018.pdf>
- 2 Some states' cottage food laws are more restrictive than others. For example, most states allow the sale only of homemade foods not requiring refrigeration, and many have laws dictating the quantities of cottage foods that may be sold, where they may be sold or even who may sell them. North Dakota and Wyoming, on the other hand, have "food freedom laws" allowing the unrestricted sale of virtually all homemade foods. McDonald, 2017.
- 3 McDonald, 2017.
- 4 See <http://ij.org/case/wisconsin-baked-good-ban/>
- 5 Because the sample of respondents used for this survey was not random—and therefore is likely not representative—results cannot be extrapolated to apply to all of Wisconsin's home bakers. Throughout this paper, when we refer to "home bakers" as a group, we mean the bakers who responded to our survey—not all home bakers in the state.
- 6 No legislation or rules to govern home-baked goods have been adopted in Wisconsin. Rather, home bakers operate under the terms of the court judgment ruling the ban on home baking unconstitutional.
- 7 U.S. Small Business Administration. (2017). *Women's business ownership: Data from the 2012 Survey of Business Owners* (Issue Brief Number 13). <https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf>; U.S. Census Bureau. (2012). *Statistics for all U.S. firms that were home-based by industry, gender, ethnicity, race, and veteran status for the U.S.: 2012 Survey of Business Owners*. <https://factfinder.census.gov/bkmk/table/1.0/en/SBO/2012/00CSCB19>
- 8 U.S. Department of Agriculture Economic Research Service. (2018, July 30). Population [Table]. *State fact sheets: Wisconsin*. <https://data.ers.usda.gov/reports.aspx?StateFIPS=55&StateName=Wisconsin&ID=17854>
- 9 Moreover, these results may be skewed because we conducted our survey in February, when there are likely to be few farmers' markets open in many areas. Data collected in late fall may show greater diversity in locations of sales.
- 10 This number is likely artificially low since the survey went into the field just months after the law changed.
- 11 2017 North Dakota Laws Ch. 191 (H.B. 1433), <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>; Powers, M. (2017, May 3). North Dakota is now open for homemade food businesses. Arlington, VA: Institute for Justice. <http://ij.org/north-dakota-now-open-homemade-food-businesses/>; Farm-to-Consumer Legal Defense Fund. (2017, March 28). Wyoming expands Food Freedom Act. <https://www.farmtoconsumer.org/blog/2017/03/28/wyoming-expands-food-freedom-act/>; Wyoming Food Freedom Act, 2015 Wyo. Laws Ch. 121 (H.B. 56), <http://legisweb.state.wy.us/2015/bills/HB0056.pdf>; Linnekin, B. (2015, March 14). Tremendous victory for Wyoming's bipartisan Food Freedom Act. *Reason*. <http://reason.com/archives/2015/03/14/tremendous-victory-for-wyomings-bi-parti>
- 12 See <https://ij.org/activism/legislation/model-legislation/model-food-freedom-act/>

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JENNIFER MCDONALD

Jennifer McDonald is a senior research analyst at the Institute for Justice, where she conducts original social science research as part of the strategic research team. Her research is featured in *Flour Power: How Cottage Food Entrepreneurs Are Using Their Home Kitchens to Become Their Own Bosses*, *License to Work: A National Study of Burdens from Occupational Licensing* (2nd ed.), *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd ed.), and *Forfeiture Transparency and Accountability: State-by-State and Federal Report Cards*. Prior to joining IJ, McDonald worked in California politics. She holds a Master of Public Administration, with emphases on management and economic policy, from the London School of Economics and Political Science and a bachelor's degree in history with a political science minor from California State University San Marcos.

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ABOUT IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, educational choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government. The Institute's strategic research program produces social science and policy research to inform public policy debates on issues central to IJ's mission.



Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

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www.ij.org
p 703.682.9320
f 703.682.9321

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FLOUR POWER

How Cottage Food Entrepreneurs
Are Using Their Home Kitchens to
Become Their Own Bosses

by Jennifer McDonald



December 2017
Updated September 2018

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EXECUTIVE SUMMARY

All across the country, thousands of Americans are making food at home to sell in their communities. Together, they form a small but growing industry—the homemade food, or “cottage food,” industry. Cottage foods fit within a larger trend, as consumers take greater interest in where their food comes from and who makes it.

In response to the growing interest in cottage foods, most states have adopted laws—“cottage food laws”—that allow the sale of homemade foods, subject to regulation. Some state cottage food laws are more restrictive than others, and it seems likely that at least some of these laws are hindering entrepreneurship. For example, some states dictate the types and quantities of foods that may be sold, where they may be sold, or even who may sell them. At the same time, there appears to be no rational link between many restrictions on cottage food sales and any legitimate government concern for public health and safety.



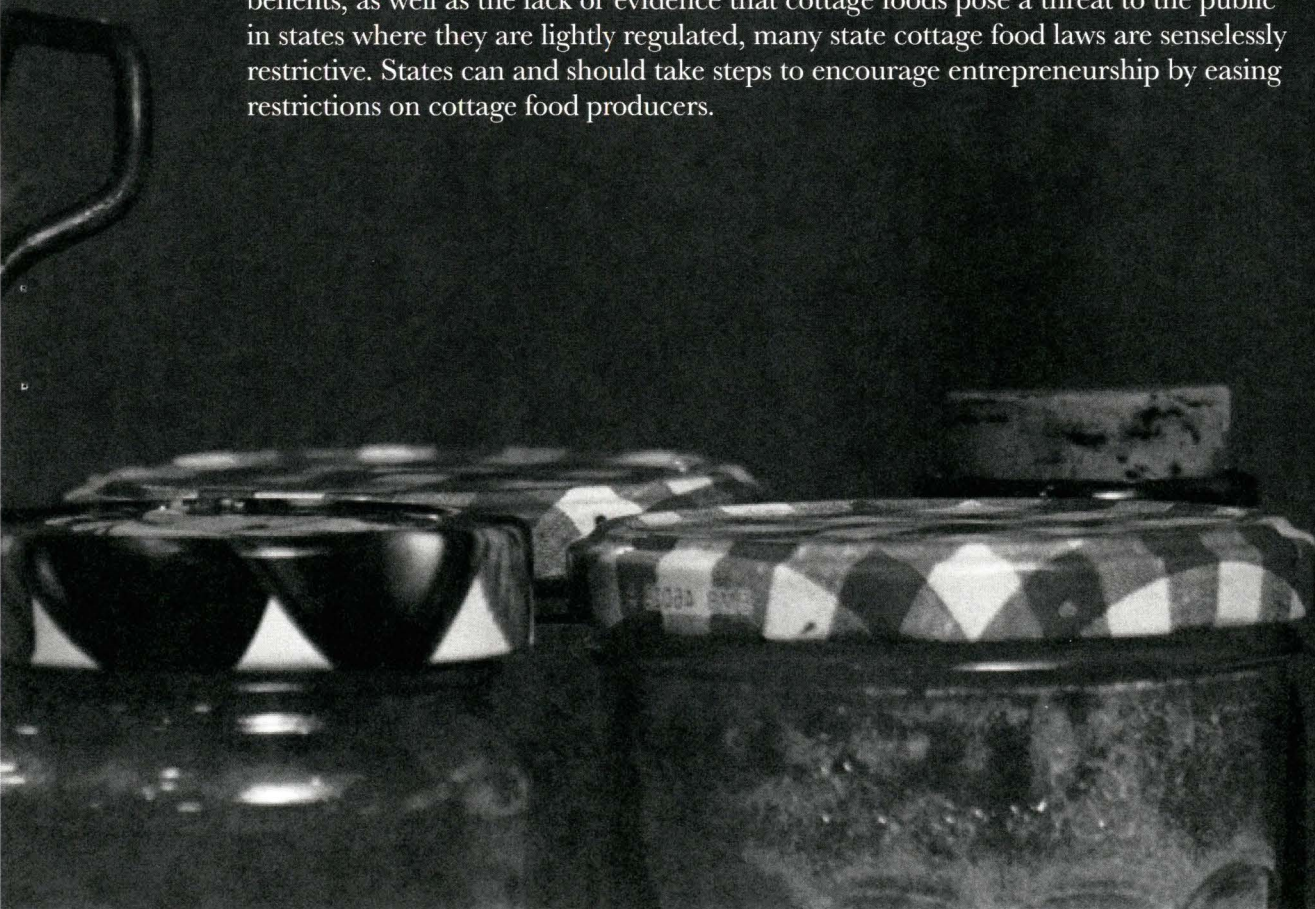
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Despite the attention cottage foods have garnered from policymakers and the public, startlingly little is known about the people who make cottage foods or their businesses.

This study aims to change that. It surveyed 775 registered cottage food producers across 22 states, asking them who they are, what their businesses mean to them, and how they view their states' cottage food laws. Key findings include:

- **Cottage foods provide an attractive avenue to entrepreneurship for women, particularly in rural areas.**
Producers are overwhelmingly female, are likely to reside in rural areas, and have below-average incomes.
- **Cottage food businesses are important to their owners.**
Producers report that they value the flexibility and financial support offered by their businesses. They also report enjoying the opportunity their businesses afford them to be creative while being their own bosses.
- **Some states' cottage food laws may be hindering entrepreneurship.**
Rural producers are less likely than their urban and suburban peers to plan to expand their businesses if the government prohibits them from selling certain types of foods that they would otherwise like to sell.

Cottage food businesses enhance the financial and personal well-being of their owners while also providing in-demand products to willing customers. Given these benefits, as well as the lack of evidence that cottage foods pose a threat to the public in states where they are lightly regulated, many state cottage food laws are senselessly restrictive. States can and should take steps to encourage entrepreneurship by easing restrictions on cottage food producers.



INTRODUCTION

Kriss Marion owns a small farm and bed-and-breakfast in Blanchardville, Wisconsin. She makes bread and muffins to serve to her guests and to sell alongside her farm-grown vegetables at the local farmers' market, which she co-founded. But until recently, it was against the law in Wisconsin for Kriss to sell even one homemade muffin—even though it was perfectly legal for her to serve those very same muffins to her bed-and-breakfast guests. When Kriss had muffins left over, she had to give them away or feed them to her pigs and chickens. That changed after Kriss joined with two other Wisconsin home bakers—Lisa Kivirist and Dela Ends—and the Institute for Justice (IJ) to challenge the home-baked good ban in court. They won when the trial court judge ruled the ban unconstitutional in May 2017.¹

Kriss is just one of thousands of people across the country who make food at home to sell in their communities. Together, they form a small but growing industry—the “cottage food” industry.

Most states regulate this industry by way of “cottage food laws.” These are laws that make it legal for people to make food at home to sell at certain venues. State cottage food laws typically limit the types of foods that may be sold to those they deem “non-potentially hazardous,” which generally means foods that do not require refrigeration. Such items may include baked goods, “high-acid” canned goods (such as jams and pickles),² popcorn, chocolates, syrups, honeys, dried herbs and a variety of other foods.

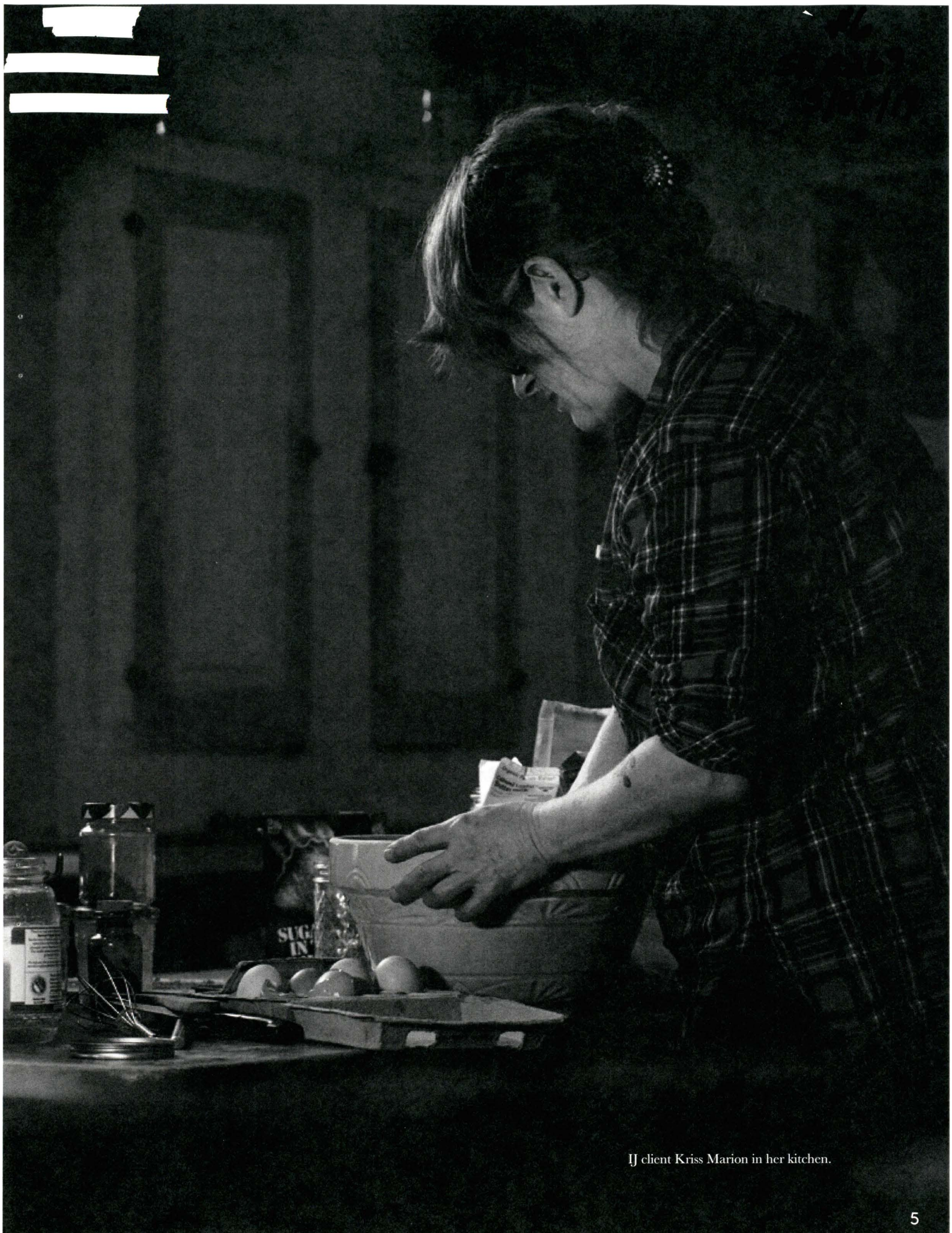
However, state cottage food laws are not all created equal: Some grant more freedom to cottage food producers than others. Some states allow the sale of all foods considered non-potentially hazardous, while other states allow the sale of only some such foods. For example, before Wisconsin's home-baked

good ban was overturned, people in the state could sell homemade jams, pickles, popcorn, maple syrup and raw apple cider, but not cookies or cakes.³ Yet home-baked goods are as safe as, or even safer than, these other items⁴ and can be sold legally in all but one other state.⁵ State cottage food laws may also place limits on where or how much (in dollars or in units) people can sell. These laws may also impose other restrictions, such as barring non-farmers from selling cottage foods. And New Jersey, which has the most restrictive state cottage food laws in the nation, completely bans the sale of any homemade food (see the sidebar on page 9 to read about how New Jersey's home-baked good ban harms real people).⁶

Legal restrictions on cottage food sales likely hinder entrepreneurship in the industry, particularly when they impinge on the types of foods people can sell. However, to date it has been impossible to say with any certainty how such restrictions may be shaping this industry because very little is known about producers or their businesses.

This study aims to change that. It is the first comprehensive look at cottage food producers in the United States. Up to now, little systematic research has focused on the cottage food industry. This dearth of research likely stems from a lack of data, though the government collects information on home-based businesses more generally.⁷

The absence of data about the cottage food industry is not for lack of interest on the part of policymakers or the public. Several states have recently legalized cottage foods or liberalized their cottage food laws.⁸ And two states, North Dakota and Wyoming, have gone even further, adopting “food freedom laws,” which allow the virtually unrestricted sale of nearly all types of homemade foods directly to the consumer.⁹



IJ client Kriss Marion in her kitchen.

At the same time, anecdotal evidence suggests the cottage food industry is growing. After Texas legalized cottage foods in 2011, producers formed at least 1,400 new businesses in one year alone. Similarly, California's 2013 law legalizing cottage foods led to the creation of over 1,200 new businesses in just its first year. And since Minnesota eased its restrictive cottage food laws in 2015, more than 3,000 cottage food businesses have registered with the state.¹⁰

One possible reason for the cottage food industry's apparent growth is that producers are responding to increasing consumer interest in where our food comes

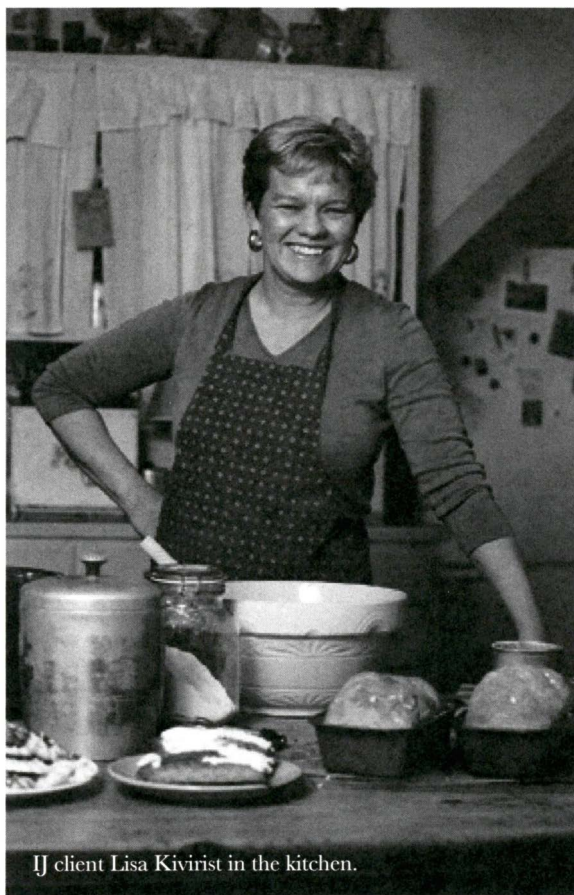
from and who makes it. As Wisconsin baker and pickler, and co-plaintiff in IJ's challenge to Wisconsin's ban on home-baked goods, Lisa Kivirist put it, "Making something and selling it to your neighbors is the oldest newest thing. ... In our increasingly industrialized food world, when we don't know where our food comes from, [purchasing cottage foods is] the ultimate opportunity to meet the producer."¹¹

And as states liberalize their cottage food laws, more of these home-based businesses are able to flourish. But—without a systematic look at the industry—policymakers are making laws governing this growing industry armed with little to no knowledge about the people and businesses that make it up.

Reported here are the results of a first-of-its-kind survey that asked cottage food producers a series of questions about who they are, what their businesses mean to them, and how they view their state's cottage food laws. Key findings include:

- Cottage food producers are overwhelmingly female, are likely to reside in rural areas, and have below-average incomes.
- Cottage food producers value the flexibility and financial support offered by their businesses. They also enjoy the opportunity to be creative while being their own bosses.
- Rural cottage food producers—compared to those in urban and suburban settings—are less likely to plan to expand their businesses if the government prohibits them from selling certain types of foods that they would otherwise like to sell.

These findings suggest that cottage food businesses provide their owners with independence, as well as supplemental income. They also indicate that some restrictions on cottage foods may be stifling entrepreneurship, specifically in rural communities.



IJ client Lisa Kivirist in the kitchen.

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THE LEGAL LANDSCAPE OF THE COTTAGE FOOD INDUSTRY

Nearly every state allows cottage food businesses to operate by exempting certain homemade food operations from state laws that regulate commercial food establishments more generally. However, laws governing the cottage food industry vary widely. Cottage food regulations include, but are not limited to, caps on the dollar amount of cottage foods that may be sold, restrictions on the types of cottage foods that may be sold, restrictions on where cottage foods may be sold, and restrictions on who may sell cottage foods or on what ingredients producers may use to make them.

See Tables 1 and 2 on pages 12–15 for an analysis of the cottage food laws of all 50 states and the District of Columbia. This analysis was informed by Forrager.com—an online community of cottage food enthusiasts dedicated to helping people start their own cottage food businesses. (Unless stated otherwise, all sources for the legal analysis are Forrager.com.)¹²

Sales Caps

Twenty-seven states cap how much cottage food producers can sell. These caps range from as little as \$5,000 for some producers in South Dakota and Wisconsin to \$50,000 in several other states (see Table 1). Some states' sales caps apply only in certain circumstances. For example, South Dakota's \$5,000 sales cap applies only to producers who sell baked goods directly from home.¹³ Those who instead sell from venues such as farmers' markets or events face no sales cap but must submit each of their products for safety testing.¹⁴

Food Restrictions

Most states allow the sale of only “non-potentially hazardous” cottage foods like cookies, cakes, high-acid canned goods (e.g., jams and pickles), and other items that do not require refrigeration (see Table 1). However, some states also allow the sale of cottage foods that do require refrigeration, such as cheesecakes and cream-filled desserts, under certain conditions.

For instance, Iowa, Ohio, Oregon and Virginia have multi-tiered regulatory schemes that allow

home-based producers to sell some perishable goods provided they follow more stringent regulations. In Iowa, producers can sell as much non-potentially hazardous cottage food as they would like out of their homes and at farmers' markets with few restrictions. But if they want to sell perishable baked goods, they must obtain a “home food establishment” license from the government, undergo annual inspections and limit their sales to \$20,000 per year.¹⁵ Ohio, Oregon and Virginia allow producers to sell some perishable products with no sales cap and at any venue if they submit to licensing and inspections; Virginia also requires food safety training in some cases.¹⁶

Such multi-tiered schemes give cottage food producers the option of jumping through additional regulatory hoops in exchange for more freedom in the kinds of foods they can sell. At the same time, they provide less onerous regulatory options for those who just want to sell certain cottage foods that do not need refrigeration.

North Dakota and Wyoming—the states with the freest homemade food laws—have legalized the home production and sale of nearly all foods (except for some meat products) without any sort of government license or inspection.¹⁷ North Dakota's food freedom law is more restrictive than Wyoming's in that it, among other things, prohibits online and phone sales.

Farmers Only

A few states place restrictions on who may sell cottage foods or on what ingredients they may use to make them. Kentucky, for example, allows people to sell cottage foods only if they are a farmer or else personally grew the main ingredients in the food.¹⁸ Rhode Island also limits the sale of cottage foods to farmers and requires that the main ingredients for jams, preserves, fruit pies and syrup be locally grown or harvested.¹⁹ In Ohio, if a person wants to sell homemade syrup or honey, 75 percent of the syrup or honey must have come from their own trees or hives.²⁰

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Home Restrictions

Nearly every state allows people to sell cottage foods at farmers' markets, and the majority of states also allow sales at roadside stands, at community events and right from producers' homes (see Table 2). And some states allow producers who submit to stricter requirements to sell from more venues, such as at retail stores or over the internet. However, Illinois, Maryland and Nebraska allow producers to sell their goods only at farmers' markets, limiting opportunities to interact with customers.²¹ In places with particularly cold winters or where farmers' markets otherwise operate only seasonally, such restrictions may mean that producers are effectively allowed to sell their goods only a few months out of the year. And bans on sales from the home effectively prohibit producers from taking custom orders for things like wedding or birthday cakes.

Other Regulations

Many states require cottage food producers to pay a fee and obtain a license or permit from the government or, barring that, register with the state, county or local department that regulates food production. A number of states also require producers to complete food handlers' training.

Some states also require periodic health inspections of the home similar to those that restaurants must undergo or testing of the products themselves. Individual product testing, as South Dakota requires, could become costly for producers who make a wide variety of goods.²²

Hawaii has no cottage food laws, which means that the sale of homemade food is not statutorily allowed in the Aloha State. However, it appears that the health department is currently allowing the limited sale of cottage foods through a temporary permitting scheme.²³

In August 2017, Maine adopted a first-of-its-kind "food sovereignty law" that allows municipalities to regulate local food distribution as they see fit.²⁴ Generally, food regulation is a top-down affair, with state governments setting standards by statute or regulation.



WHEN IT COMES TO HOLDING BACK HOME BAKERS, NEW JERSEY TAKES THE CAKE

New Jersey is the only state in the nation with an outright ban on cottage foods. Every other state allows the sale of at least some cottage foods under some circumstances.

New Jersey's ban has real, harmful effects on would-be cottage food producers across the state, including home baker Heather Russinko. Heather works full time and is a single mom to a 14-year-old son. She has a plan to turn her talent for baking into a home-based small business. She began baking for her son's school activities nearly 10 years ago and quickly found that baking was a great way to stay involved as a parent while holding a full-time job.

Cake pops—essentially cake and frosting on a stick—are Heather's specialty. When friends and neighbors started offering to pay for her cake pops, Heather realized that her baking hobby could be the key to building a better life for her and her son. It might even allow her to save enough money to send

her son to college—something she likely could not afford to do otherwise.

Heather's dreams were dashed when she learned that she could be fined up to \$1,000 for selling even one cake pop. Thanks to New Jersey's ban, Heather is missing out on real business opportunities. She recently baked for her cousin's wedding and was asked by the wedding venue if she would join their list of vendors. Heather had to refuse this excellent business opportunity because she bakes from her home kitchen.

Now Heather and a group of other New Jersey home bakers have teamed up with the Institute for Justice to sue the state over its unconstitutional ban on selling home-baked goods.¹ The bakers will not rest until New Jersey's ban on the sale of home-baked goods—the last of its kind in the nation—is a thing of the past.

¹ See <http://ij.org/case/new-jersey-cottage-foods>



IJ client Heather Russinko in the kitchen.

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WHY RESTRICT COTTAGE FOODS?

Most food that is sold to the public is subject to extensive commercial licensing laws like those faced by restaurants and food wholesalers. Among other things, these laws require that food be prepared in a commercial-grade kitchen. Cottage food laws essentially create an exception for foods made in residential kitchens. Restrictions on homemade food sales may be driven by fear that homemade food could cause outbreaks of foodborne illness.²⁵

However, there appears to be little—if any—evidence to suggest that the types of cottage foods commonly deemed “non-potentially hazardous” pose health and safety risks to the public. Furthermore, the high degree of variation observed across states suggests that many cottage food regulations lack a rational link to public health and calls into question the need for regulating the industry so strictly.

There may be another motivation for some restrictions on cottage food sales: protectionism. In New Jersey and Wisconsin, for example, powerful lawmakers have fought to maintain barriers to cottage food entrepreneurship in order to shield brick-and-mortar bakeries and others from competition.

In New Jersey, the chair of the Senate Health, Human Services and Senior Citizens Committee has for years refused to bring legislation legalizing home baking up for a vote, even though the legislation enjoys bipartisan support and passed the Assembly unanimously.²⁶ He argues that home baking sales would come “out of the bottom line of a small baker.”²⁷

And before Wisconsin’s home-baked good ban was overturned, the state Assembly speaker repeatedly blocked legislation legalizing home baking, even though it was popular in the state and passed the Senate three times unanimously.²⁸ The speaker told *CBS Sunday Morning* that he feared legalizing home baking would create an “unequal playing field and undermine” other small businesses.²⁹ The speaker, who owns a

commercial food business,³⁰ has received the “Friend of Grocers” Award from the Wisconsin Grocers Association,³¹ which opposed the legislation.³²

Also opposing the legislation was the Wisconsin Bakers Association (WBA). Even though the WBA sells over 400,000 homemade cream puffs—a food requiring refrigeration—at the state fair every year without a license under a nonprofit exemption to the state’s food licensing laws, it argued that the home-baked good ban was necessary to protect the public.³³

In IJ’s case on behalf of Wisconsin home bakers Kriss Marion, Lisa Kivirist and Dela Ends, the judge remarked on the unseemliness of the WBA’s behavior, observing that the Association can “use a carved out exemption to profit, and then use those profits to support efforts not to change [the state’s Food] Code.” This, he said, “speaks loudly to the level of special interests at play here. It gives great credence to the claims by the Plaintiffs of the force of economic protectionism at play here.”³⁴

The judge went on to hold the baked-good ban unconstitutional. Of the judgment, IJ client Lisa said, “This is more than a win for us home-based bakers, it’s recognition for all small businesses that we have the right to earn an honest living and will not be stymied because of industry influence.”³⁵ (See the sidebar on page 11 to read more about IJ’s fight to overturn Wisconsin’s home-baked good ban.)

It is not surprising that protectionism is at play in the cottage food industry given that a body of research into regulation more generally has found that economic regulation is often motivated by anticompetitive impulses. For example, legislatures often restrict entry into various professions by way of occupational licensing laws, which are frequently enacted at the request of industry insiders and their respective trade associations.³⁶ With reduced competition, these insiders are able to charge more for their services.³⁷

WISCONSIN HOME BAKERS ARE FINALLY FREE TO BAKE THEIR CAKES AND SELL THEM, TOO

In May 2017, a Wisconsin trial court judge ruled that the state's home-baked good ban was unconstitutional in a lawsuit brought by the Institute for Justice. Unfortunately, the state claimed the ruling applied only to the plaintiffs in the case, rather than to all Wisconsinites, and continued to enforce the ban on everyone except for IJ clients Kriss Marion, Lisa Kivistik and Dela Ends. Other home bakers across the state were left in limbo, hesitant to risk fines or jail time by selling their goods to willing customers.

Hannah Shaw, a stay-at-home mother from Black River Falls, Wisconsin, was one such home baker. Hannah turned to home baking as a way to supplement her husband's income while caring for her three young children, including twins with special needs. Initially, she sold cakes to family and friends to earn money for school supplies. Word soon spread about her delicious and beautiful cakes and Hannah's business grew.

But soon the state threatened Hannah with a \$10,000 fine and a year in jail if she sold even one more homemade cake. To stay in business, Hannah would have had to get a commercial food license. Among other things, this would have required Hannah to spend tens of thousands of dollars to rent or build a commercial grade kitchen, something she could ill afford to do. Moreover, she had no interest in turning her home-based business into a full-fledged professional bakery.

Thankfully, the judge clarified in September 2017 that the ruling applied to all residents of the state and that all Wisconsinites have the constitutional right to sell home-baked goods directly to consumers.¹ Hannah immediately started advertising her services online, and orders for her custom cakes quickly came pouring in. Hannah feels much more secure knowing she can finally use her talents to help financially support her young family.

¹ Final Order and Judgment, *Kivistik v. Wis. Dep't. of Agriculture*, No. 16-CV-06 (Lafayette Cty. Cir. Ct. Sept. 29, 2017).



Hannah Shaw in her kitchen.

e 1: Sales caps, allowed foods and farming requirements, by state

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| State | Sales Cap ¹ | Non-Refrigerated | | Refrigerated Goods | Farmers Only |
|------------------------------------|--|------------------|-------------|--------------------|--------------|
| | | Baked Goods | Other Goods | | |
| Alabama | \$20,000 | Yes | Yes | No | No |
| Alaska | \$25,000 | Yes | Yes | No | No |
| Arizona* | None | Yes | Yes | No | No |
| Arkansas | None | Yes | Yes | No | No |
| California - Type A* | \$50,000 | Yes | Yes | No | No |
| California - Type B* | \$50,000 | Yes | Yes | No | No |
| Colorado | \$10,000 per product | Yes | Yes | No | No |
| Connecticut | \$25,000 | Yes | Yes | No | No |
| Delaware* | \$25,000 | Yes | Yes | No | No |
| District of Columbia | \$25,000 | Yes | Yes | No | No |
| Florida | \$50,000 | Yes | Yes | No | No |
| Georgia* | None | Yes | Yes | No | No |
| Hawaii | No cottage food laws, although some sales appear to be permitted temporarily | | | | |
| Idaho | None | Yes | Yes | No | No |
| Illinois* | \$36,000 | Yes | Yes | No | No |
| Indiana | None | Yes | Yes | No | No |
| Iowa | None | Yes | Yes | No | No |
| Iowa - Home Food Establishment* | \$20,000 | Yes | Yes | Yes | No |
| Kansas | None | Yes | Yes | No | No |
| Kentucky* | None | Yes | Yes | No | Yes |
| Kentucky - Microprocessors | \$35,000 | No | Yes | No | Yes |
| Louisiana | \$20,000 | Yes | Yes | No | No |
| Maine* | None | Yes | Yes | No | No |
| Maryland | \$25,000 | Yes | Yes | No | No |
| Massachusetts* | None | Yes | Yes | No | No |
| Michigan | \$20,000 | Yes | Yes | No | No |
| Minnesota* | \$18,000 | Yes | Yes | No | No |
| Mississippi | \$20,000 | Yes | Yes | No | No |
| Missouri | \$50,000 | Yes | Yes | No | No |
| Montana* | None | Yes | Yes | No | No |
| Nebraska | None | Yes | Yes | No | No |
| Nevada* | \$35,000 | Yes | Yes | No | No |
| New Hampshire | \$20,000 | Yes | Yes | No | No |
| New Hampshire - Homestead License* | None | Yes | Yes | No | No |
| New Jersey | Total ban on the sale of cottage foods | | | | |

Table 1 continued on next page

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Table 1 continued from previous page

| State | Sales Cap ¹ | Non-Refrigerated | | Refrigerated Goods | Farmers Only |
|---|----------------------------|------------------|-------------|--------------------|--------------|
| | | Baked Goods | Other Goods | | |
| New Mexico | None | Yes | Yes | No | No |
| New York* | None | Yes | Yes | No | No |
| North Carolina* | None | Yes | Yes | No | No |
| North Dakota | None | Yes | Yes | Yes | No |
| Ohio | None | Yes | Yes | No | No |
| Ohio - Home Bakery License* | None | Yes | Yes | Yes | No |
| Oklahoma | \$20,000 | Yes | No | No | No |
| Oregon | \$20,000 | Yes | No | No | No |
| Oregon - Domestic Kitchen Bakeries* | None | Yes | No | Yes | No |
| Oregon - Domestic Kitchen Processors* | None | Yes | Yes | Yes | No |
| Pennsylvania* | None | Yes | Yes | No | No |
| Rhode Island* | None | Yes | Yes | No | Yes |
| South Carolina | \$15,000 | Yes | Yes | No | No |
| South Dakota | None | Yes | Yes | No | No |
| South Dakota - Home Sales | \$5,000 | Yes | No | No | No |
| Tennessee | None | Yes | Yes | No | No |
| Tennessee - Domestic Kitchen* | 100 units of sale per week | Yes | Yes | No | No |
| Texas | \$50,000 | Yes | Yes | No | No |
| Utah* | None | Yes | Yes | No | No |
| Vermont - Home Bakeries* | None | Yes | No | No | No |
| Virginia | None | Yes | Yes | No | No |
| Virginia - Home Food Processing Operations* | None | Yes | Yes | Yes | No |
| Washington* | \$25,000 | Yes | Yes | No | No |
| West Virginia* | None | Yes | Yes | No | No |
| Wisconsin - Baked Goods | None | Yes | No | No | No |
| Wisconsin - Canned Goods | \$5,000 | No | Yes | No | No |
| Wyoming | None | Yes | Yes | No | No |
| Wyoming - Food Freedom | None | Yes | Yes | Yes | No |

* Indicates that producers from this state and under this regulatory regime were included in the survey.

¹ Annual dollar amount, except where otherwise noted.

Note: Except where otherwise noted, this analysis was current as of October 2017. For additional information about the intricacies of states' cottage food laws, see Appendix A.

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Venues where cottage foods may be sold, by state

| State | Farmers' Markets | Roadside Stands | Community Events | Home | Online | Restaurants | Retail Stores |
|------------------------------------|--|-----------------|------------------|------|--------|-------------|---------------|
| Alabama | Yes | Yes | Yes | Yes | No | No | No |
| Alaska | Yes | Yes | Yes | Yes | No | No | No |
| Arizona* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Arkansas | Yes | No | Yes | Yes | No | No | No |
| California - Type A* | Yes | Yes | Yes | Yes | Yes | No | No |
| California - Type B* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Colorado | Yes | Yes | Yes | Yes | Yes | No | No |
| Connecticut | Yes | Yes | Yes | Yes | No | No | No |
| Delaware* | Yes | Yes | Yes | Yes | No | No | No |
| District of Columbia | Yes | No | Yes | No | No | No | No |
| Florida | Yes | Yes | Yes | Yes | Yes | No | No |
| Georgia* | Yes | Yes | Yes | Yes | Yes | No | No |
| Hawaii | No cottage food laws, although some sales appear to be permitted temporarily | | | | | | |
| Idaho | Yes | Yes | Yes | Yes | Yes | No | No |
| Illinois* | Yes | No | No | No | No | No | No |
| Indiana | Yes | Yes | No | No | Yes | No | No |
| Iowa | Yes | No | No | Yes | No | No | No |
| Iowa - Home Food Establishment* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Kansas | Yes | Yes | Yes | No | No | No | No |
| Kentucky* | Yes | Yes | No | Yes | No | No | No |
| Kentucky - Microprocessors | Yes | Yes | No | Yes | No | No | No |
| Louisiana | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Maine* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Maryland | Yes | No | No | No | No | No | No |
| Massachusetts* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Michigan | Yes | Yes | Yes | Yes | No | No | No |
| Minnesota* | Yes | No | Yes | Yes | Yes | No | No |
| Mississippi | Yes | Yes | Yes | Yes | No | No | No |
| Missouri | Yes | Yes | Yes | Yes | Yes | No | No |
| Montana* | Yes | Yes | Yes | Yes | No | No | No |
| Nebraska | Yes | No | No | No | No | No | No |
| Nevada* | Yes | Yes | Yes | Yes | No | No | No |
| New Hampshire | Yes | Yes | No | Yes | No | No | No |
| New Hampshire - Homestead License* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| New Jersey | Total ban on the sale of cottage foods | | | | | | |

Table 2 continued on next page

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Table 2 continued from previous page

| State | Farmers' Markets | Roadside Stands | Community Events | Home | Online | Restaurants | Retail Stores |
|---|------------------|-----------------|------------------|------|--------|-------------|---------------|
| New Mexico | Yes | Yes | Yes | No | No | No | No |
| New York* | Yes | Yes | Yes | No | No | No | No |
| North Carolina* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| North Dakota | Yes | Yes | Yes | Yes | No | No | No |
| Ohio | Yes | No | Yes | Yes | Yes | Yes | Yes |
| Ohio - Home Bakery License* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Oklahoma | No | No | No | Yes | No | No | No |
| Oregon | Yes | Yes | Yes | Yes | No | No | No |
| Oregon - Domestic Kitchen Bakeries* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Oregon - Domestic Kitchen Processors* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Pennsylvania* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Rhode Island* | Yes | Yes | Yes | Yes | No | No | Yes |
| South Carolina | Yes | Yes | Yes | Yes | No | No | No |
| South Dakota | Yes | Yes | Yes | No | Yes | No | No |
| South Dakota - Home Sales | No | No | No | Yes | Yes | No | No |
| Tennessee | Yes | No | Yes | Yes | No | No | No |
| Tennessee - Domestic Kitchen* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Texas | Yes | Yes | Yes | Yes | No | No | No |
| Utah* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Vermont - Home Bakeries* | Yes | Yes | Yes | Yes | Yes | No | No |
| Virginia | Yes | No | No | Yes | No | No | No |
| Virginia - Home Food Processing Operations* | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Washington* | Yes | Yes | Yes | Yes | No | No | No |
| West Virginia* | Yes | No | Yes | No | No | No | No |
| Wisconsin - Baked Goods | Yes | Yes | Yes | Yes | No | No | No |
| Wisconsin - Canned Goods | Yes | No | Yes | No | No | No | No |
| Wyoming | Yes | Yes | Yes | Yes | No | No | No |
| Wyoming - Food Freedom | Yes | Yes | Yes | Yes | Yes | No | No |

* Indicates that producers from this state and under this regulatory regime were included in the survey.

Note: Except where otherwise noted this analysis was current as of October 2017. For additional information about the intricacies of states' cottage food laws, see Appendix A.

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METHODS

Survey

To better understand cottage food producers and the legal and regulatory hurdles they face across the country, I conducted an original survey of cottage food producers. I looked at cottage food producers across 25 states that require some form of registration with state, local or county government, because that registration enabled me to obtain the producer contact information required to conduct the survey (see Figure 1).³⁸

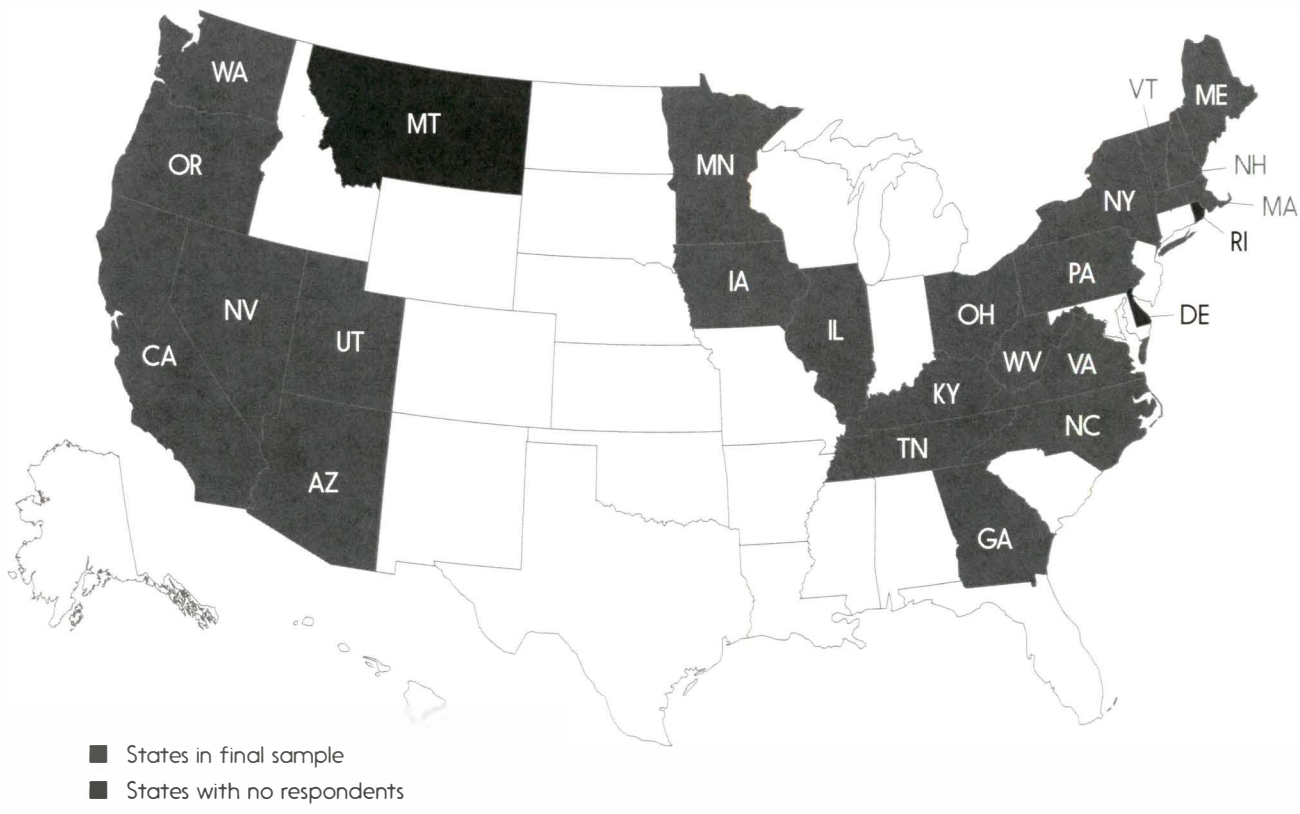
Some of the states in the sample have multi-tiered regulatory schemes that do not require registration of producers who sell limited types or quantities of cottage foods or who sell at limited venues. In such cases, I examined only those producers who elected to operate in a tier requiring registration.

The results of this survey are therefore applicable only to cottage food producers residing in states

with some form of registration requirement and, in states with multi-tiered schemes, only to producers operating in a registration-required tier (regimes under which producers in this study were registered are marked with an asterisk in Tables 1 and 2). Put differently, results do not apply to cottage food producers who are not required to register. They may have different demographic characteristics or business practices than indicated by this survey's results.

WPA Intelligence was contracted to survey registered cottage food producers using a population of over 25,000 producers across 25 states. The result was a final sample of 775 producers in 22 states. The survey questioned producers about their background, what their cottage food business means to them and their finances, and how their states' cottage food laws impact their businesses.

Figure 1: States Surveyed



Note: WPA was unable to collect completed responses from people in Delaware, Montana and Rhode Island, bringing the sample of states down from 25 to 22

Legal Analysis

I also analyzed state cottage food laws to determine what kinds of regulatory burdens cottage food producers face and what effect those burdens might have on their businesses. To do this, I compiled and categorized states' cottage food regulations, as displayed in Tables 1 and 2 on pages 12–15.

The legal analysis of state cottage food laws included the following categories:³⁹

- Caps on sales by cottage food businesses.
- Foods allowed for sale, disaggregated across eight categories used by Forrager.com:
 - Baked goods that do not require refrigeration.
 - Confectionary goods, such as candies and chocolates.
 - Condiments, such as salsas, sauces, honey, syrups, pickles and relishes.
 - Dry goods, such as spices, herbs and teas.
 - Pastries that do not require refrigeration.
 - Preserves, jams and jellies.
 - Snacks, such as trail mix, granola and popcorn.
 - Foods that require refrigeration.
- Venues where cottage foods may be sold, disaggregated across seven categories used by Forrager.com:
 - Farmers' markets.
 - Roadside or produce stands.
 - Community events.
 - Directly from home.
 - Restaurants.
 - Retail stores.
 - Online or by phone.
- Limitations on who may produce and sell cottage foods (e.g., farmers only).

To supplement the Forrager.com analysis, and to account for regulatory variation within states across counties or municipalities, producers were also surveyed on whether they encountered the following regulatory requirements:

- Required food handlers' training or other specialized training.
- Home kitchen inspections.
- Fees required to operate.

Statistical Analyses

I conducted statistical analyses to examine 1) the potential effect of various regulations on cottage food businesses' annual sales and their owners' annual incomes and 2) what effect those regulations might have on entrepreneurship, as measured by whether or not a producer reported plans to expand their business in the near future. To isolate the effects

of regulations from other confounding factors, I controlled for numerous producer, business and legal characteristics, such as the types of food made and where food is sold, all of the previously mentioned legal and regulatory components, and personal details such as age, race, gender and education. For a full list of these variables, full details of the analyses, and complete results, see the Appendixes.

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RESULTS

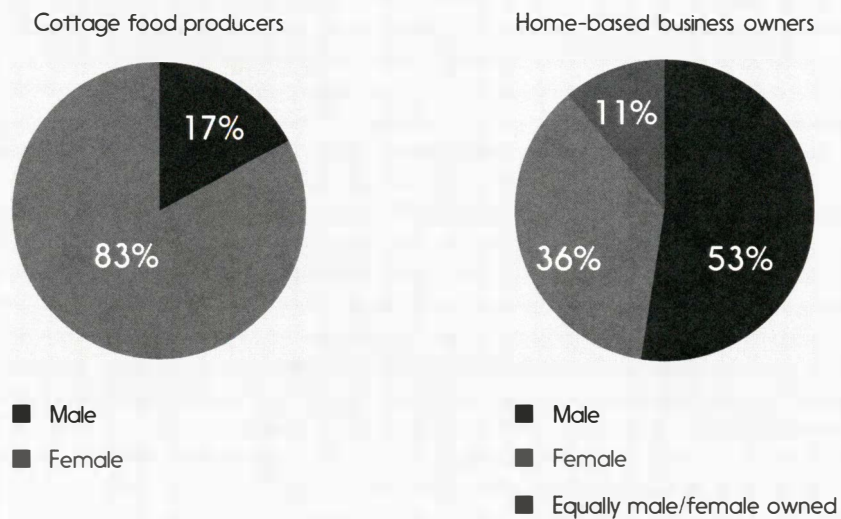
This first-of-its-kind survey presents a clearer picture of who registered cottage food entrepreneurs are and what their businesses mean to them. The results also provide insight into how cottage food laws in the states surveyed can help these entrepreneurs achieve their business goals—or hinder them from realizing their potential.

Who are cottage food producers?

Cottage food producers are primarily women who live in rural areas, have below-average incomes, and operate their businesses as a supplemental occupation or hobby. These findings are consistent with prior research suggesting that home-based businesses in the rural Midwest are predominantly female-owned sole proprietorships.¹⁰

The cottage food industry provides an attractive avenue to entrepreneurship for women. While business ownership overall—and even home-based business ownership specifically—remains a male-dominated activity,¹¹ cottage food producers are overwhelmingly female (see Figure 2).

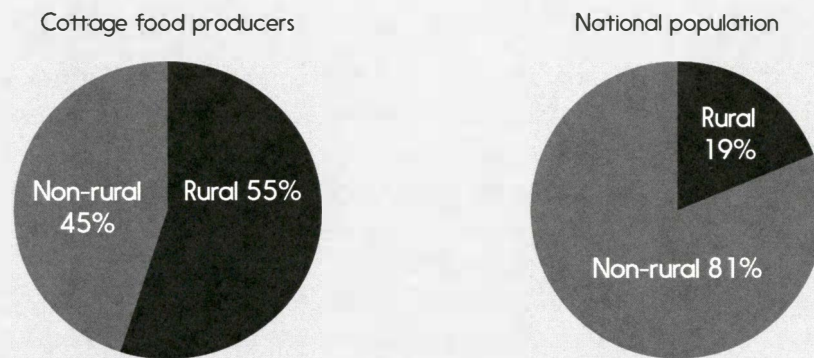
Figure 2: Women represent a greater share of cottage food producers compared to home-based business owners more generally.



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Cottage food producers are more likely to live in rural communities, while the vast majority of Americans today live in urban or suburban neighborhoods (see Figure 3).⁴² One possible explanation for why cottage food producers are concentrated in rural areas is that farmers find cottage foods to be a natural complement to running a family farm. Alternatively, perhaps there is a greater need for locally produced foods in rural communities where there are fewer accessible brick-and-mortar bakeries and other food stores. Whatever the reason, this disproportionate rate is notable, as rural communities tend to fare worse than the rest of the nation on indicators of socioeconomic well-being.⁴³

Figure 3: Cottage food producers disproportionately live in rural communities compared to the general population.



Cottage food producers report household incomes that are considerably lower than the national median.⁴⁴ Likewise, producers who are retired report incomes lower than the median for people aged 65 and older.⁴⁵ (See Figures 4 and 5.) Even a small amount of extra income from a cottage food business can be helpful to a lower-income household. At the very least, these businesses can serve as a self-sustaining hobby or creative outlet for people who would not otherwise have the disposable income to expend on such a pursuit.

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Figure 4: Cottage food producers report lower household income than the national average.

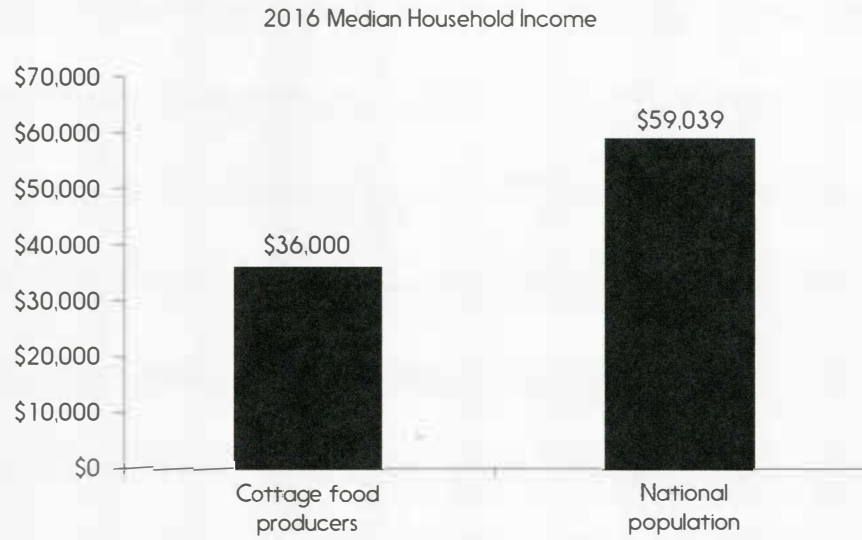
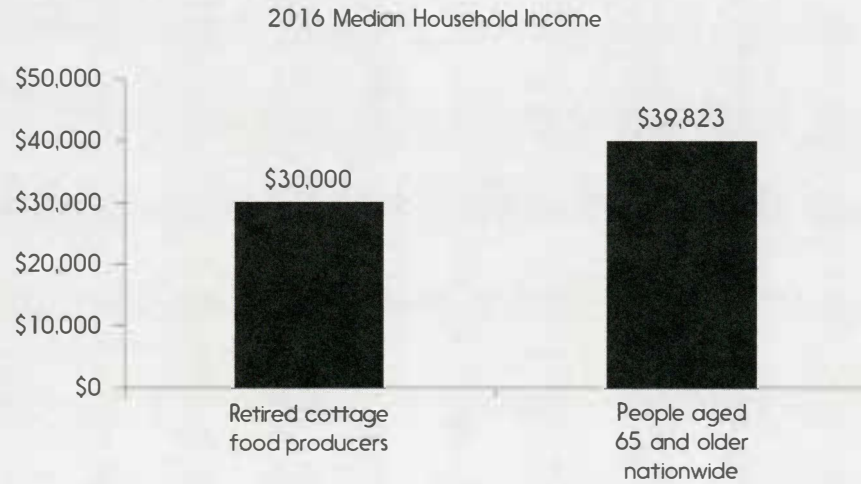


Figure 5: Retired cottage food producers report lower household income than the national average for people aged 65 and older.



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lead, most cottage food producers do not run their businesses full time, but rather treat cottage foods as a supplementary occupation or hobby (see Figure 6). Producers tend to work full or part time at other jobs, be retired, or identify as homemakers (see Figure 7).

Figure 6: Most cottage food producers view their businesses as a supplementary occupation or hobby.

How would you describe your cottage food business?

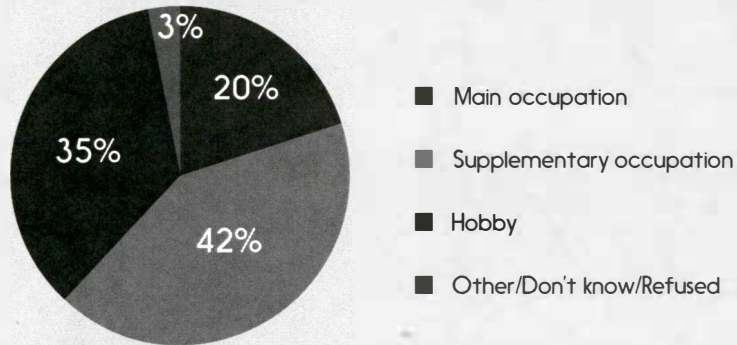
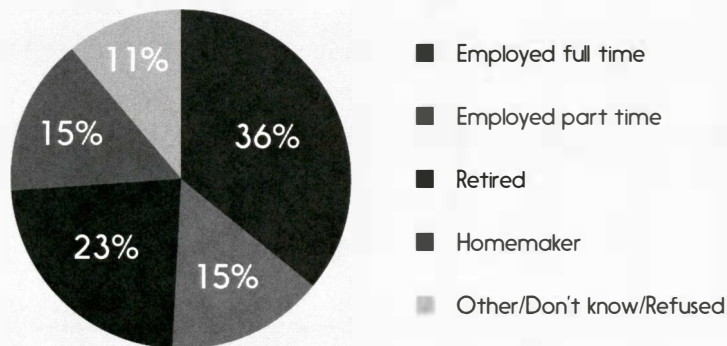


Figure 7: Of producers for whom their cottage food business is not a full-time job, most work full or part time at other jobs.

When not working on your cottage food business, are you ... ?



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What do cottage food businesses look like?

Most cottage food businesses can be considered micro-enterprises. Producers do not employ anyone else, even part time, and they run their cottage food businesses when they are not working their main jobs or caring for their families. On average, producers spend 15 hours per week working on their businesses.

Typical earnings are quite small: median sales of \$2,000 and median profits of just \$500 in 2016. And these businesses require very little startup capital—a median of just \$500—which more than 70 percent finance through personal savings.

But while the typical cottage food business is understandably quite modest, some cottage food businesses do develop into fairly sizable operations. As seen in Table 3, some producers do tens of thousands of dollars in annual sales. For these producers, caps on allowed annual sales may be real barriers to success. And in a few cases, producers may be unaware of or choose not to heed their states' sales caps, risking fines or other penalties.

Table 3: Minimum and Maximum Dollar Amount Sold in 2016

| State | Minimum Sales | Maximum Sales ^a | Sales Cap ^b |
|----------------|---------------|----------------------------|------------------------|
| Arizona | \$0 | \$36,000 | None |
| California | \$0 | \$49,000 | \$50,000 |
| Georgia | \$0 | \$15,000 | None |
| Iowa | \$0 | \$40,000 | \$20,000 |
| Illinois | \$0 | \$15,000 | \$36,000 |
| Kentucky | \$0 | \$25,000 | None |
| Massachusetts | \$0 | \$40,000 | None |
| Maine | \$0 | \$60,000 | None |
| Minnesota | \$0 | \$60,000 | \$18,000 |
| North Carolina | \$0 | \$55,000 | None |
| New Hampshire | \$8,000 | \$30,000 | None |
| Nevada | \$200 | \$4,000 | \$35,000 |
| New York | \$0 | \$50,000 | None |
| Ohio | \$200 | \$65,000 | None |
| Oregon | \$0 | \$65,000 | None |
| Pennsylvania | \$0 | \$43,000 | None |
| Tennessee | \$0 | \$12,000 | None ^c |
| Utah | \$0 | \$16,000 | None |
| Virginia | \$0 | \$30,000 | None |
| Vermont | \$0 | \$45,000 | None |
| Washington | \$300 | \$16,000 | \$25,000 |

^a This column does not display outliers who report having sold over one-half standard deviation more than the mean annual sales in the sample.

^b In the case of states that have multi-tiered regulatory systems, the sales cap listed here applies to those producers who are required to register with the government and who are therefore captured in this survey.

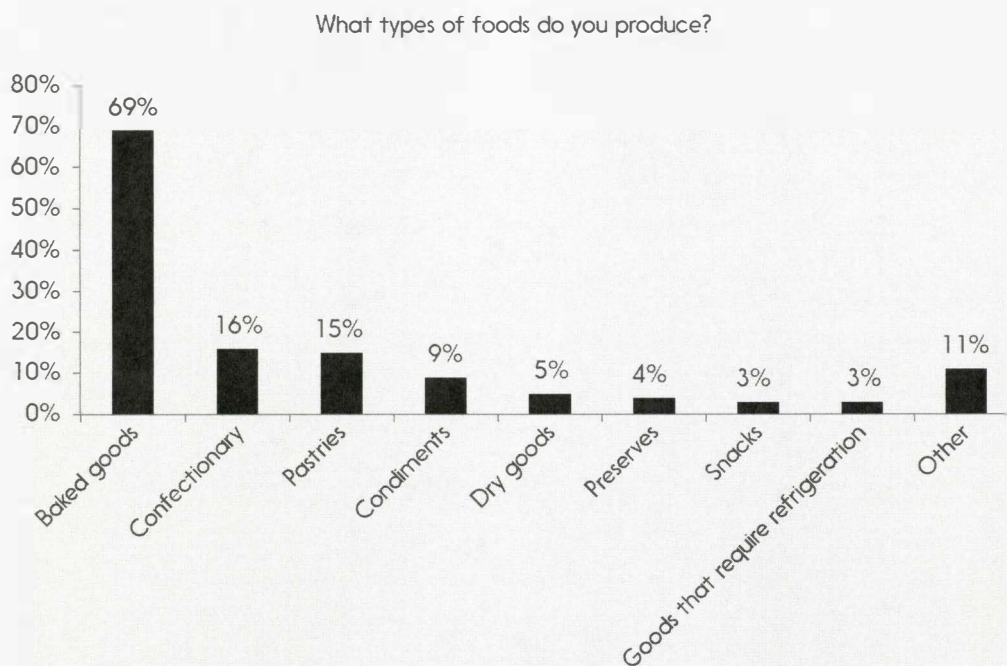
^c Tennessee does have a sales cap, but it is a limit on the number of units that may be sold each week—not on the dollar amount that may be sold. For this reason, no cap is reflected in this table.

Note: The sole respondent from West Virginia declined to answer the survey question regarding annual sales, so that state is not included in this table.

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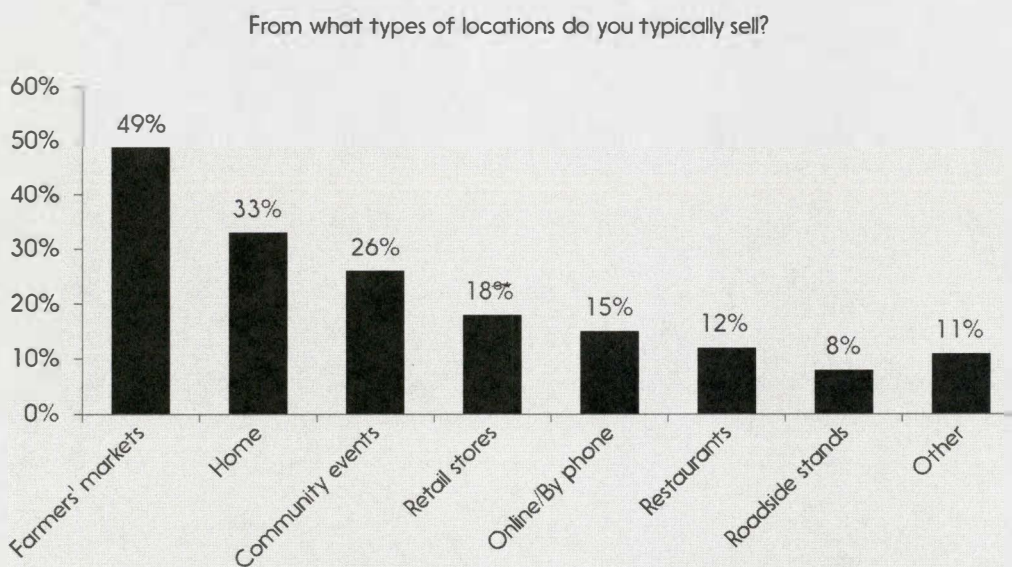
cottage food producers make baked goods and sell them at farmers' markets (see Figures 8 and 9). This may be because every state in the sample allows home-baked goods that do not require refrigeration to be sold at farmers' markets, even if they place other restrictions on cottage food sales.

Figure 8: Most cottage food producers make baked goods that do not require refrigeration.



Note: Percentages do not add up to 100 because producers could select more than one response.

Figure 9: Most cottage food producers sell their goods at farmers' markets.



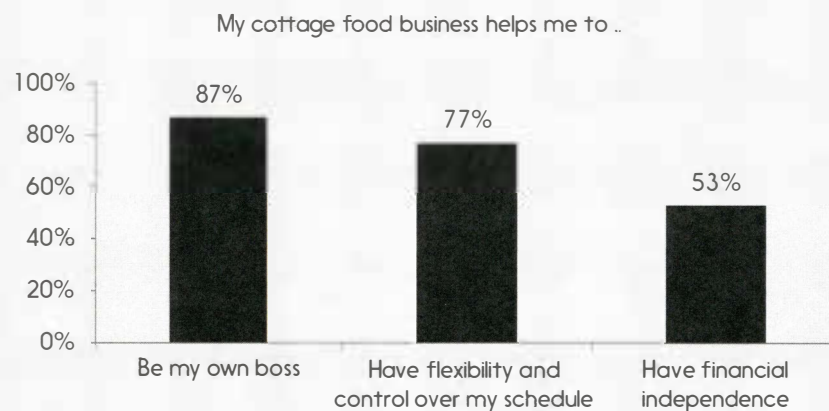
Note: Percentages do not add up to 100 because producers could select more than one response.

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What do cottage food businesses mean to their owners?

Despite the modest size of most cottage food businesses, these enterprises are nonetheless important to their owners. Cottage food production gives people the chance to be their own boss, as shown in Figure 10. It also provides them with flexibility and control over their schedules and, in many cases, financial independence.

Figure 10: Cottage food businesses are important to their owners.

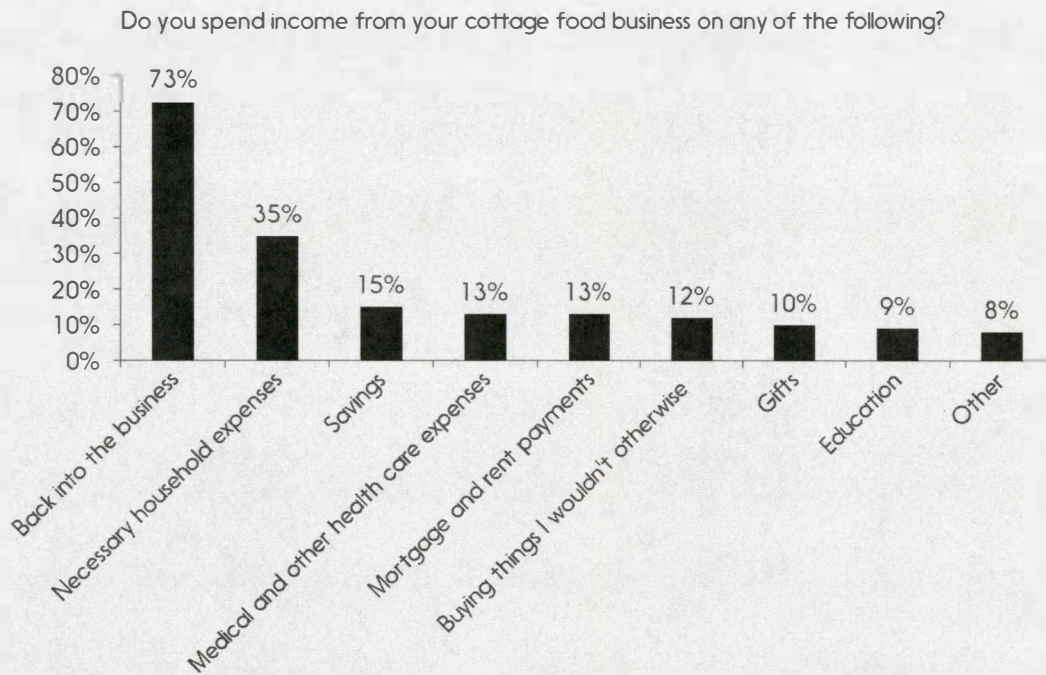


These results fit with the research on home-based businesses more generally. For example, one study found that female home-based business operators' primary motivation for going into business for themselves was to be their own boss. That same study also found that female home-based business operators' primary reasons for running their business out of their home were the lower operational costs and the ability to "balance work and family."¹⁶ The same is likely true for many cottage food producers given the value they place on flexibility.

And for some cottage food producers, running a business from home may be their only option. For example, Jane Astramecki, a home baker whom IJ represented in a successful challenge to Minnesota's restrictions on the sale of cottage foods, started her home-based Jane Dough Bakery after sustaining a serious injury that made work outside the home impractical. Selling her homemade scones, cookies, cakes and jams became a way for her to earn money for her family while staying home with her kids.¹⁷

ed, although the earnings of most cottage food businesses are small, they are nevertheless important to the financial well-being of their owners' households. The statistical analysis suggests that as annual cottage food sales increase, household income also increases.⁴⁸ Many producers use their earnings to cover necessary household expenses, such as bills, food and clothing, and other essential spending, such as health care or housing (see Figure 11).

Figure 11: Most cottage food producers put their earnings back into their businesses.



Note: Percentages do not add up to 100 because producers could select more than one response.

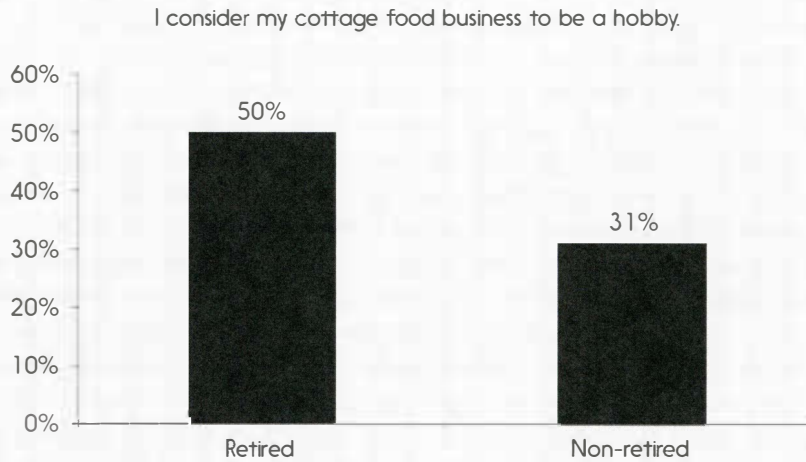
And the same appears to be true for home-based businesses more broadly, especially in the rural communities where most cottage food producers live. Research suggests that in lean economic times, home-based businesses can become an important way to supplement income.⁴⁹ In recent years, rural communities have struggled to attract and retain well-paying jobs,⁵⁰ despite the recent uptick in the national economy.⁵¹ *The Wall Street Journal* has gone so far as to declare America's rural communities the new "inner city," as poverty and crime rates continue to increase in these areas.⁵² In such an environment, the ability to use one's own home to generate income by starting a business can be particularly valuable.

Beyond the flexibility and financial benefits they offer their owners, cottage food businesses can also offer other less tangible, but no less important, benefits. Cottage food producers also report being motivated to start their businesses by a desire to do something enjoyable with their spare time, to do something creative, to be their own bosses and to fulfill personal dreams.

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Interestingly, given that many retirees are on fixed incomes and might be expected to particularly value the extra income, retirees appear to be less interested than non-retirees in the financial benefits of a cottage food business. Instead, retirees value filling their spare time with something enjoyable and creative and pursuing a cottage food business as a hobby. (See Figure 12.) By contrast, far fewer non-retirees see cottage food production as a hobby. For most non-retirees, cottage foods are a real business enterprise, whether a main occupation or a supplementary one.

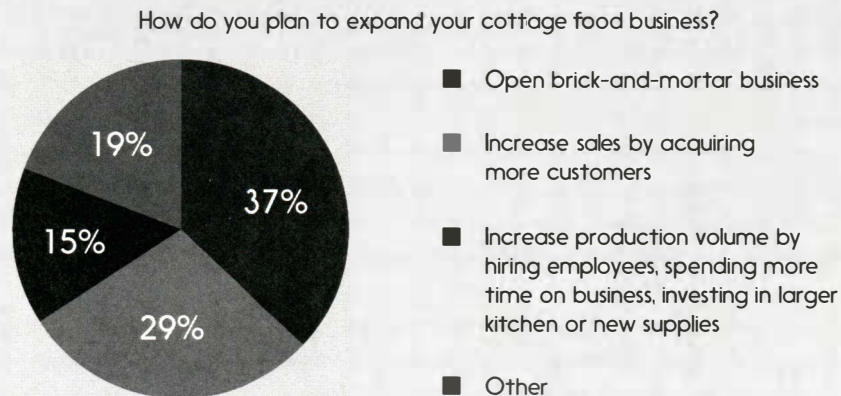
Figure 12: Retirees are more likely than non-retirees to consider their cottage food businesses a hobby.



What are cottage food producers' plans for their businesses, and what factors might influence those plans?

More than a third of cottage food producers plan to expand their businesses in the near future. Some plan to open a brick-and-mortar business, but others plan to grow their businesses while continuing to operate them from the home (see Figure 13).

Figure 13: Respondents plan to open brick-and-mortar stores in the future.



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Several factors may influence whether cottage food producers plan to expand their businesses in the near future. For example, perhaps somewhat counterintuitively, hobbyists are more interested in expansion than those who consider cottage foods a supplemental occupation.³³ Hobbyists also experience lower annual sales.³⁴ These findings suggest that some producers who start out as hobbyists come to recognize the financial potential of their businesses and hope that expansion will make cottage foods a greater source of income for their households.

Other factors that may make a producer more likely to expand their business include:

- Using a greater amount of startup capital.³⁵
- Planning to sell cottage foods further into the future.³⁶
- Considering the cottage food business important to the household's financial well-being.³⁷
- Having a higher level of education.³⁸
- Having children living at home.³⁹
- Selling cottage foods in retail stores.⁴⁰

How do cottage food laws affect entrepreneurship?

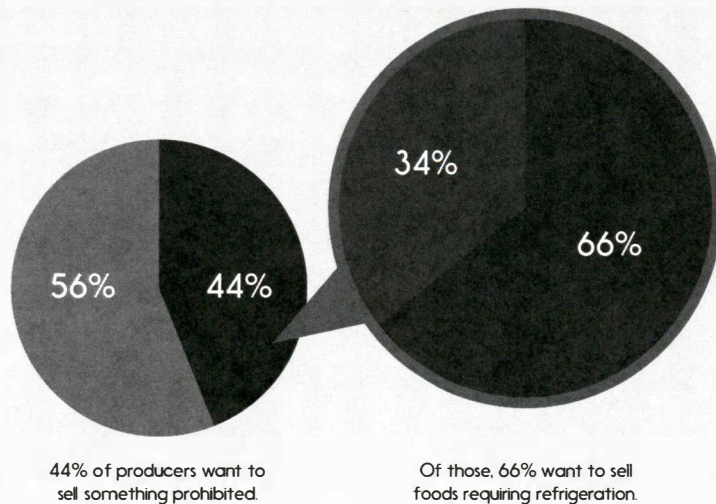
Some cottage food regulations impose real restrictions on producers, while others appear to be less burdensome. Nearly half of cottage food producers want to sell some types of foods that their states prohibit, and of those people, most want to sell items that require refrigeration (see Figure 14). Most states prohibit the sale of such items, with the few exceptions being states like Iowa, Ohio, Oregon and Virginia, which have multi-tiered regulatory schemes, and North Dakota and Wyoming, which have broader food freedom laws.⁶¹

Laws restricting the types of foods producers may sell could be stifling entrepreneurship. While producers who already sell foods that require refrigeration are more likely to plan to expand their businesses,⁶² rural producers who want to sell prohibited foods are less likely than their urban and suburban peers to plan to expand theirs.⁶³

One possible explanation for the latter trend is that the ability to diversify product range is a particularly important factor for the growth of a rural cottage food business due to the lack of a concentrated customer base in more sparsely populated communities. It could be that producers in denser urban and suburban environments are able to access a greater number of customers without needing to offer a wider range of products in order to expand.

Other cottage food regulations appear less burdensome in that they have little effect on plans to expand. Simple food safety training requirements do not appear to have a significant impact on cottage food businesses. The same is true of home inspections. Where required, they do not appear to affect a producer's income or a business's annual sales, nor do they appear to be a barrier to planning to expand a cottage food business. However, it is possible that restrictions on cottage foods have other effects that I was not able to measure, such as discouraging would-be entrepreneurs from starting a cottage food business in the first place.

Figure 14: Cottage food producers want to sell a wider variety of products.



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RECOMMENDATIONS

The stark disparities in cottage food laws and the lack of evidence of threats to public safety in lightly regulated states suggest many of these regulations are unnecessary. At the same time, cottage food businesses promote greater financial well-being and independence for their owners. Legislatures could spur greater entrepreneurial activity if they would simply get out of the way. They can do so without sacrificing public safety in the following ways.

Expand the types of foods that producers can sell

Results presented here suggest a link between entrepreneurial activity in rural communities and the freedom to produce different types of foods. To expand this freedom—and promote entrepreneurship—states should allow the virtually unrestricted sale of all non-potentially hazardous cottage foods, including baked goods, high-acid canned goods like jams and pickles, popcorn, chocolates, syrups, and honeys.

States should also consider allowing the sale of homemade foods requiring refrigeration. One approach is to adopt a multi-tiered regulatory scheme. Under such a scheme, producers could sell a wider variety of foods provided they complete food safety training or agree to home sanitation inspections—two regulations this study has found are not particularly burdensome for cottage food producers. A multi-tiered scheme can help assuage any concerns over food safety without overly burdening producers whose products pose less of a risk. Such schemes are already in use in Iowa, Ohio, Oregon and Virginia,⁶⁴ and so far there appear to be no reports of foodborne illness outbreaks.

Another approach to expanding the types of homemade foods that people can sell is to adopt food freedom laws, which allow virtually all kinds of homemade foods to be sold directly to consumers, with relatively few restrictions. In recent years, both North Dakota and Wyoming have done just that, and so far there is no indication that these laws have had an ill effect on public health.⁶⁵

Expand the types of venues where cottage foods can be sold

Some states limit cottage food producers to selling from farmers' markets or prevent them from selling

out of their homes. Not only is it unclear what legitimate government interest is served by such venue restrictions, but venue restrictions can be very burdensome for producers. Farmers' markets require set days and hours of sale, cutting into the flexibility and convenience that inspire so many cottage food producers to go into business in the first place. In addition, fees to rent space at farmers' markets and other community events can quickly add up, making it difficult for some producers to turn a profit. Not allowing producers to sell from home also effectively prevents producers from taking custom orders for things like wedding or birthday cakes. Allowing cottage foods to be sold directly out of the home can open up entrepreneurial opportunities to those of modest means while also providing the flexibility that home-based business owners value.⁶⁶ States should allow producers to sell their products directly to consumers at any location they choose.

Remove restrictions that limit cottage food production to farmers or others able to grow the main ingredients in their products

Some states require cottage food producers to be farmers or to have grown the main ingredients in the foods they sell. Such restrictions serve no discernable purpose while leaving aspiring entrepreneurs unable to make a living. Take home baker Jennifer Lopez, for example. While living in Missouri, she sold homemade cakes to make ends meet. Just like many of the cottage food producers in this survey, she used the money to take care of her children and cover necessary household expenses. But when she moved across the border to Kentucky, her business became illegal because she is not a farmer. Lopez now risks landing herself in jail for selling cakes that are perfectly legal in Missouri, and that would be legal in Kentucky if she were a farmer.⁶⁷

Lift or eliminate sales caps

While the majority of cottage food businesses are micro-enterprises, some do grow into sizable businesses generating tens of thousands of dollars in annual sales. States with sales caps should lift or eliminate them to allow these businesses more freedom to grow.

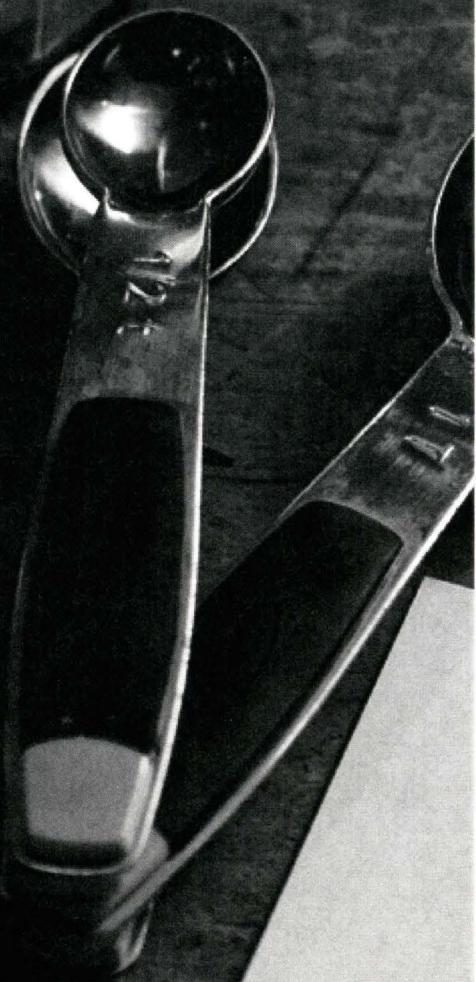
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CONCLUSION

As consumers continue to take greater interest in where their food comes from and how it was made, and as more states begin to open up their cottage food laws, the cottage food industry continues to grow. The cottage food producers in this survey are part of that growth. Many of them said they plan to expand their businesses by adding new foods to their repertoire or by selling at new points of sale. Several even have plans to open brick-and-mortar stores. These businesses are important to the financial and personal well-being of their owners. They also bring value to their customers who want to buy tasty treats from their neighbors. States can, and should, take steps to encourage entrepreneurship by easing restrictions on cottage food producers.

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White Lane



SB 2ab
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APPENDIX A: ADDITIONAL NOTES ON STATE COTTAGE FOOD LAWS

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State cottage food laws are full of idiosyncrasies that cannot be captured by the broad categories displayed in Tables 1 and 2 on pages 12–15. See below for additional information about the legal factors analyzed in those tables. Note that there may be additional intricacies to a state's cottage food laws that are not captured in the report and were not considered in the analysis:

Connecticut: Connecticut passed a new cottage food law in 2015, which is reflected in Tables 1 and 2. However, as this report went to print in December 2017, the state had not yet brought the new law into force, so producers were not able to sell their cottage foods under the new regime. Also as this report went to print, the new law was not yet reflected on Forrager.com, so this analysis relies on the text of the law⁶⁸ rather than on Forrager.

Delaware: Farmers in Delaware can get a separate “on-farm home processing” license that allows annual sales of up to \$40,000.⁶⁹

District of Columbia: The District of Columbia passed a new cottage food law in 2013, which is reflected in Tables 1 and 2.⁷⁰ However, as this report went to print in December 2017, the Department of Health had not yet created the cottage food registry necessary to allow producers to begin selling their cottage foods legally.

Illinois: Illinois also has a “home kitchen operations” law, which is for bakers and does not require registration. However, it is not available everywhere in the state because counties must specifically adopt it and most have not yet done so.⁷¹ For this reason, the home kitchen operations law is not analyzed in Tables 1 and 2.

Indiana: Producers in Indiana can take orders over the internet, but they must deliver those orders to a farmers’ market or roadside stand for payment.⁷²

Kentucky: Kentucky’s microprocessors scheme allows the sale of pickles, as well as higher-risk canned goods, such as tomatoes, beans and corn. Because the scheme has such a narrow scope, microprocessors were not included in the survey.⁷³

Louisiana: Louisiana allows custard or cream-filled bakery products to be sold, provided pasteurized milk products are used to make them, but it does not permit the sale of other refrigerated goods.⁷⁴

Maine: Maine’s “food sovereignty law,” adopted in August 2017, is not reflected in this analysis.⁷⁵

Maryland: In Maryland, cottage foods may be sold at farmers’ markets or events resembling farmers’ markets: “[a] location in a farmer’s market or at a public festival or event where raw agricultural products ... are sold.”⁷⁶ Cottage foods may not be sold at other events.⁷⁷ For this reason, Maryland is treated as a state that limits cottage food sales to farmers’ markets only.

North Dakota: North Dakota’s food freedom law, passed in January 2017, was not yet reflected on Forrager.com as this report went to print in December 2017. For this reason, the analysis relies on the text of the new law⁷⁸ rather than on Forrager.

Ohio: Ohio requires that at least 75 percent of a producer’s honeys and syrups come from the person’s own hives or trees, respectively.⁷⁹

Oklahoma: Small-scale honey producers (producing less than 500 gallons per year) in Oklahoma can sell their honey directly to consumers under a law separate from the state’s cottage food law.⁸⁰

Oregon: Farmers in Oregon can sell their products under a separate “farm direct” law, as long as they grew the primary ingredients used in the products and limit sales of acidified foods to \$20,000 per year.⁸¹

Rhode Island: To be allowed to sell cottage foods, Rhode Island farmers must sell more than \$2,500 of agricultural products per year.⁸²

Vermont: Vermont has several different laws for the sale of homemade foods, so this study focuses on the home baker license. Licensure is required for bakers who sell more than \$125 worth of product per week, but the foods and sales venues permitted do not change with licensure. The Vermont home bakers included in this survey were licensed, indicating that they sell (or intend to sell) more than \$125 worth of product per week.⁸³

Virginia: While Virginia does not have a cap on cottage food sales overall, it does have a \$3,000 annual sales cap on pickles and other acidified vegetables.⁸⁴

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APPENDIX B: STUDY METHODS

Survey

Sample

The final survey sample included 775 cottage food producers across 22 states. The sample was constructed by securing a list of all registered cottage food producers from state, county and local governments in the 25 states whose registration schemes allowed me to identify these producers, listed in Table B1. This facilitated the creation of a population of 25,418 registered cottage food producers. This population does not include people in those states who produce cottage foods illegally. It also does not include people who produce cottage foods legally but who were impossible to identify because they limit their business activity such that they are not required to register. States with multi-tiered regulatory schemes that require some producers to register but not others are marked with an asterisk in Table B1.

The sample was constructed as a stratified random sample. The number of participants from each state was proportional to the percentage of registered cottage food producers from that state in the 25-state registered cottage food producer population. After proportional quota frequencies were set for each state, cottage food producers from the respective state lists were called at random until quotas were filled as close to the target as possible.

Data Collection

To draft the survey instrument, I relied largely on questions from other similar surveys and adapted them for the purpose of this survey. A benefit of this approach was that most of the questions in the survey had already been field tested. Prior to data collection, the survey was pre-tested on a small sample of cottage food producers. Results from the pre-test were used to refine questions for the sake of clarity and precision.

WPA Intelligence, a research company based in the District of Columbia, collected survey data between March 13 and April 6, 2017. In 24 of the 25 states, surveys were completed by telephone. In Arizona, however, surveys were completed online. The state would only release email addresses, not phone numbers or home addresses. The different survey mode in Arizona was controlled for in regression analysis. The full dataset can be found online at www.ij.org/report/cottage-foods-survey.

Survey Weights

To ensure geographic representativeness of the cottage food producer population and appropriately account for different response rates by producers in different states, a post-survey weighting adjustment was used. The population targets were based on producer counts that were compiled from the 25-state population. Weights were calculated using iterative proportional fitting, which uses a maximum-likelihood algorithm to find the minimum adjustment necessary to make the individual responses match the population distribution of the states.

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Table B1: Producers by State

| State | Producers in Population | Percent of Population | Producers in Survey Sample | Weighted Completes |
|----------------|-------------------------|-----------------------|----------------------------|--------------------|
| Arizona | 5,671 | 22.3% | 103 | 130 |
| California | 2,811 | 11.1% | 90 | 91 |
| Delaware | 6 | 0.0% | 0 | 0 |
| Georgia | 250 | 1.0% | 7 | 7 |
| Illinois* | 362 | 1.4% | 10 | 11 |
| Iowa* | 316 | 1.2% | 25 | 19 |
| Kentucky | 759 | 3.0% | 38 | 27 |
| Maine | 1,285 | 5.1% | 67 | 54 |
| Massachusetts | 661 | 2.6% | 21 | 20 |
| Minnesota | 423 | 1.7% | 32 | 23 |
| Montana | 73 | 0.3% | 0 | 0 |
| Nevada | 161 | 0.6% | 4 | 4 |
| New Hampshire* | 122 | 0.5% | 5 | 4 |
| New York | 3,147 | 12.4% | 92 | 96 |
| North Carolina | 4,186 | 16.5% | 68 | 101 |
| Ohio* | 835 | 3.3% | 33 | 29 |
| Oregon* | 781 | 3.1% | 37 | 32 |
| Pennsylvania | 1,731 | 6.8% | 75 | 62 |
| Rhode Island | 16 | 0.1% | 0 | 0 |
| Tennessee* | 135 | 0.5% | 4 | 4 |
| Utah | 288 | 1.1% | 16 | 15 |
| Vermont* | 167 | 0.7% | 8 | 7 |
| Virginia* | 1,109 | 4.4% | 33 | 34 |
| Washington | 95 | 0.4% | 6 | 4 |
| West Virginia | 28 | 0.1% | 1 | 1 |
| Total | 25,418 | 100.0% | 775 | 775 |

* Indicates states with multi-tiered regulatory schemes that require some producers to register but not others.

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Variable Transformation and Recoding

Several questions were recorded by the surveyors as verbatim text values and had to be recoded into numeric values. Recoding details are contained in Table B2.

Variables marked with an asterisk in Table B2 had high rates of missing values, which posed a problem for the regression analyses. To overcome this problem, I used multiple imputation to impute missing values for use in regression analysis. Descriptive statistics are reported in their original, non-imputed form.

Table B2: Recoding of Numeric Variables

| Variable | Question | Standardized Response | Example of Recoding |
|----------|---|--|--|
| Q05 | How long have you worked selling foods you made in your home? | Number of months selling cottage foods | E.g., “seven years and 3 months” became 87. |
| Q12 | How long did it take you to get all the necessary approvals from the government before you could begin selling your homemade foods? | Number of days it took to obtain necessary approvals to operate business | Days obtained by multiplying weeks by 7, months by 30, years by 365. E.g., “6 months” became 180. |
| Q17 | Since beginning your homemade food business, how many times has your home been inspected by the government? | Number of times home inspected | E.g., “four times” became 4. In cases where respondents indicated monthly, annual, etc. inspections, Q05 was used to determine how long they had been in business. The number of inspections was deduced from there. |
| Q28* | During an average work week, how much time do you spend on your homemade food business? | Number of hours spent on the business during an average week | “Days” were treated as 8 hours. “Seasonal” was generally treated as 3 months, so hours indicated were divided by 4. In cases where a range was provided, such as “12–15 hours,” the average was taken. |
| Q29* | How much of that time is spent interacting with customers? | Number of hours spent interacting with customers during an average week | |
| Q30* | How much of that time is spent organizing your homemade food business? | Number of hours spent organizing the business during an average week | |
| Q31* | How many people do you employ full time, not including yourself? | Number of people employ full time | Strictly transferring string values to numeric values. E.g., “two” became 2. |
| Q32* | How many people do you employ part time? | Number of people employ part time | |

Table B2 continued on next page

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| Variable | Question | Standardized Response | Example of Recoding |
|----------|---|---|---|
| Q33* | In 2016: How many dollars did your homemade food business generate in profit, after expenses? | Number of dollars generated in profit last year | Strictly transferring string values to numeric values. E.g., "one thousand dollars" became 1000. |
| Q34* | How many dollars did your homemade food business generate in annual sales, before you deduct expenses? | Number of dollars generated in annual sales last year | |
| Q35* | How much did you pay in sales tax to the city, county or other governments? | Number of dollars paid in sales tax last year | |
| Q36* | How much did you pay for permits, inspections or other fees specifically required to be a homemade food business? | Number of dollars paid for permits, inspections or other fees last year | |
| Q38* | What was the total amount of capital used to start your business? | Number of dollars capital used to start business | |
| Q39 | How long do you plan to continue selling homemade food? | Number of years plan to continue selling | Transferring string values into numeric values. E.g., "ten years" became 10. In cases where respondents said something like "until I retire," the time between the respondent's current age and age 65 (average retirement age) was calculated; in cases where the respondent indicated an indefinite time period, the time between the respondent's current age and age 87 (average life expectancy) was calculated. |
| Q42* | How much was your personal income in 2016? | Number of dollars of personal income last year | Strictly transferring string values to numeric values. E.g., "one thousand dollars" became 1000. |
| Q43* | How much was your household income in 2016? | Number of dollars of household income last year | |

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Some variables had skewed distribution. To normalize the distribution for use in regression analysis, I transformed the variables as described in Table B3.

Table B3: Variable Transformations

| Variable | Variable Meaning | Transformation |
|----------|--|--|
| Q12 | Number of days it took to obtain necessary approvals to operate business | Large outliers dropped, square root |
| Q29 | Hours spent with customers each week | Natural log+0.0001, to avoid transforming zero values into missing |
| Q30 | Hours spent organizing the business each week | Large outliers dropped |
| Q31 | Number of full-time employees | Natural log+0.0001, to avoid transforming zero values into missing |
| Q32 | Number of part-time employees | Natural log+0.0001, to avoid transforming zero values into missing |
| Q33 | 2016 profits | Natural log+1, to avoid transforming zero values into missing |
| Q34 | 2016 sales | Natural log+1, to avoid transforming zero values into missing |
| Q35 | 2016 sales tax | Natural log+1, to avoid transforming zero values into missing |
| Q36 | Amount paid for permits, inspections and other fees in 2016 | Natural log+1, to avoid transforming zero values into missing |
| Q38 | Amount of startup capital used | Natural log+1, to avoid transforming zero values into missing |
| Q42 | 2016 personal income | Square root |
| Q43 | 2016 household income | Square root |

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Some additional variables required deductive coding, inductive coding or a combination of the two. For example, in some cases where the surveyors recorded a response as “other,” it was clear from their verbatim description of the response that the response fit within another response option contained in the survey instrument. In such cases, I used deductive coding to place a response within the variable’s coding scheme. However, some of the “other” responses did not fit within the coding scheme. In those cases, I used inductive coding to group like responses together and used those groupings to formulate additional response options. Finally, some questions did not provide response options and were instead simply recorded verbatim. For these variables, I exclusively used inductive coding to group like responses together and to formulate a coding scheme for use in regression analysis. Explanations of these coding decisions are contained in table B4.

Table B4: Deductive and Inductive Coding

| Variable | Question | Coding |
|----------|---|---|
| Q09 | What motivated you to start your cottage food business? | Deductively coded “other” responses into existing response options. Inductively coded those responses that did not fit within the scheme to create the following additional response options: <ul style="list-style-type: none"> • I identified a gap in the market and wanted to fill it. • I identified a good business opportunity. • Friends and family encouraged me to start selling my foods. • I wanted to generate additional income during retirement. • I wanted to use the produce that I was already growing. • I have a talent for making good food. |
| Q14 | Please tell me what foods you would like to sell, but are prohibited by the government from doing so. | Deductively coded “other” responses into existing response options. Responses that did not fit within the existing coding remained coded as “other.” |
| Q23 | What types of food do you produce? | |
| Q24 | From what venues or locations do you typically sell? | |
| Q41 | In what ways do you plan to expand your business? | Inductively coded by grouping like responses together until a coding scheme emerged. The codes were: <ul style="list-style-type: none"> • Open brick-and-mortar business. • Increase sales by acquiring more customers. • Increase production volume by hiring employees, spending more time on business, investing in larger kitchen or new supplies. • Other. |

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Analysis

... shows how I coded the cottage food laws of each state in the sample. Some of the states have multi-tiered systems in which some cottage food producers are required to register with the government and some are not. Since I was able to survey only those producers required to register with the government, the analysis below captures the state laws that correspond with required registration. To complement this understanding of a state's legal environment, producers were also asked, among other questions, how many times their home or point of sale had been inspected, how much they paid in fees to the government in order to operate, and whether they had completed required food handlers' training.

Table B5: Legal Analysis by State

| State | Sales Cap | Are these producers permitted to sell refrigerated foods? | Are cottage food sales limited to farmers only? | Number of venues where cottage foods may be sold ^a |
|--------------------|-----------|---|---|---|
| Arizona | None | No | No | 7 |
| California | \$50,000 | No | No | Permit A: 5 venues Permit B: 7 venues |
| Georgia | None | No | No | 5 |
| Illinois | \$36,000 | No | No | 1 |
| Iowa | \$20,000 | Yes | No | 7 |
| Kentucky | None | No | Yes | 3 |
| Maine ^b | None | No | No | 7 |
| Massachusetts | None | No | No | 7 |
| Minnesota | \$18,000 | No | No | 4 |
| Nevada | \$35,000 | No | No | 4 |
| New Hampshire | None | No | No | 7 |
| New York | None | No | No | 3 |
| North Carolina | None | No | No | 7 |
| Ohio | None | Yes | No | 7 |
| Oregon | None | Yes | No | 7 |
| Pennsylvania | None | No | No | 7 |
| Tennessee | None | No | No | 7 |
| Utah | None | No | No | 7 |
| Vermont | None | No | No | 5 |
| Virginia | None | Yes | No | 7 |
| Washington | \$25,000 | No | No | 4 |
| West Virginia | None | No | No | 2 |

^aI categorized venues based on Forrager.com's categorization: farmers' markets, roadside stands, community events, home, online, restaurants and retail stores.

^bAfter the analysis for this report was complete, Maine adopted a new law to allow municipalities to regulate local food distribution, free from state regulatory control. That new law is not reflected in this analysis.

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Regression Analysis

The purpose of the analysis was threefold: to determine what effect—if any—legal factors have on 1) cottage food businesses' annual sales, 2) cottage food producers' household incomes, and 3) producers' plans to expand their businesses.

To isolate the effect (β) of legal factors on annual sales and household income, I used ordinary least squares (OLS) regression controlling for a wide array of personal and business characteristics. To isolate the effect (β) of legal factors on the likelihood of producers' planning to expand their businesses, I employed logistic regression while also controlling for a wide array of personal and business characteristics. For a complete list of control variables used in each analysis, see Table B6.

The primary independent variable in these three analyses was a measure of a state's sales cap. The measures of a state's sales cap took three different forms: 1) the dollar amount of the cap, 2) a binary variable that equals 1 if a state has a cap and 0 otherwise, and 3) the sales cap disaggregated into three categories based on the distribution of the sales cap dollar value. Since these three measures did not make a significant difference to the regression results, final results are based only on the dollar amount of the cap as the independent variable.

Regression equations included state probability weights, and standard errors were clustered by state.

The general model for all three analyses was:

$$Y = \beta_0 + \beta_1(\text{sales_cap}) + \beta_2(\text{refrigerated}) + \beta_3(\text{venues}) + \beta_4(\text{training}) + \beta_5(\text{approval}) + \beta_6(\text{prohibited_foods}) + \beta_7(\text{prohibited_venues}) + \beta_8(\text{inspections}) + \beta_9(\text{fees}) + \Theta + \Omega + \varepsilon$$

Where:

Model 1: Y = the natural log of a business's 2016 annual sales (OLS regression)

Model 2: Y = the square root of a producer's 2016 household income (OLS regression)

Model 3: Y = 1 if a producer plans to expand their business in the near future, 0 otherwise (logistic regression)

In all three models:

sales_cap = the dollar amount of sales cap in state where business operates

refrigerated = 1 if state allows sale of homemade foods requiring refrigeration, 0 otherwise

venues = number of venues (out of seven categories) where state allows cottage foods to be sold

training = 1 if producer was required to undergo training to operate business, 0 otherwise

approval = number of days it took to get government approvals before business could begin

prohibited foods = 1 if there are foods producer wants to sell but is prohibited by government from doing so, 0 otherwise

prohibited venues = 1 if there are venues where producer wants to sell, but is prohibited by government from doing so, 0 otherwise

inspections = number of times home has been inspected by government

fees = natural log of dollar amount paid for permits, inspections or other fees specifically required to sell cottage foods

Θ = business characteristics (see Table B6)

Ω = personal characteristics (see Table B6)

ε = error term

Model 3 also used an interaction term, *prohibited foods*rural* = 1 if the producer lives in a rural area and there are foods the producer wants to sell but is prohibited by government from doing so, 0 otherwise.

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x: Control Variables included in regression models

| Control Variable | Definition | Model 1 | Model 2 | Model 3 |
|---------------------------------|---|---------|---------|---------|
| Business characteristics | | | | |
| main_occupation | =1 if business is a main occupation, compared to a supplemental occupation, 0 otherwise | x | x | x |
| hobby | =1 if business is a hobby, compared to a supplemental occupation, 0 otherwise | x | x | x |
| hours | Number of hours spent on business per week | x | x | x |
| full_employees | Natural log of number of full-time employees | x | x | x |
| part_employees | Natural log of number of part-time employees | x | x | x |
| annual_sales | Natural log of dollar amount of 2016 annual sales | | x | x |
| capital | Natural log of dollar amount of capital used to start the business | | | x |
| continue_selling | Number of years respondent plans to continue selling cottage foods | | | x |
| importance | Producer's ranking of how important the business is to the financial well-being of their household, 1-6, 6 being most important | x | x | x |
| baked | =1 if respondent sells baked goods, 0 otherwise | x | x | x |
| confectionary | =1 if respondent sells confectionary, 0 otherwise | x | x | x |
| condiments | =1 if respondent sells condiments, 0 otherwise | x | x | x |
| dry_goods | =1 if respondent sells dry goods, 0 otherwise | x | x | x |
| pastries | =1 if respondent sells pastries, 0 otherwise | x | x | x |
| preserves | =1 if respondent sells preserves, 0 otherwise | x | x | x |
| snacks | =1 if respondent sells snacks, 0 otherwise | x | x | x |
| sell_refrigerated | =1 if respondent sells refrigerated goods, 0 otherwise | x | x | x |
| farmers_markets | =1 if respondent sells at farmers' markets, 0 otherwise | x | x | x |
| roadside_stands | =1 if respondent sells at roadside stands, 0 otherwise | x | x | x |
| community_events | =1 if respondent sells at community events, 0 otherwise | x | x | x |
| home | =1 if respondent sells from home, 0 otherwise | x | x | x |
| restaurants | =1 if respondent sells at restaurants, 0 otherwise | x | x | x |
| retail_stores | =1 if respondent sells at retail stores, 0 otherwise | x | x | x |
| online_phone | =1 if respondent sells online or by phone, 0 otherwise | x | x | x |
| Personal characteristics | | | | |
| personal_income | Square root of dollar amount of 2016 personal income | x | | x |
| household_income | Square root of dollar amount of 2016 household income | | | x |
| race | =1 if respondent is white, 0 otherwise | x | x | x |
| married | =1 if respondent is married, 0 otherwise | x | x | x |
| education | Respondent's level of education, ranked 1-5, 5 being highest | x | x | x |
| children | =1 if there are children under the age of 18 in the respondent's household, 0 otherwise | x | x | x |
| rural | =1 if the respondent lives in a rural area, compared to suburban, 0 otherwise | x | x | x |
| urban | =1 if the respondent lives in an urban area, compared to suburban, 0 otherwise | x | x | x |
| gender | =1 if female, 0 if male | x | x | x |
| arizona | =1 if respondent lives in Arizona, 0 otherwise (this controls for the different survey mode employed in Arizona) | x | x | x |

APPENDIX C: REGRESSION RESULTS

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Table C 1: Model 1

| | Coefficient | Robust Clustered S.E. | ρ |
|-------------------|-------------|-----------------------|--------|
| sales_cap | -0.000 | 0.000 | 0.867 |
| refrigerated | 0.290 | 0.391 | 0.473 |
| venues | -0.035 | 0.088 | 0.696 |
| training | -0.157 | 0.448 | 0.731 |
| approval | 0.005 | 0.040 | 0.911 |
| prohibited_foods | -0.304 | 0.303 | 0.332 |
| prohibited_venues | 0.066 | 0.336 | 0.847 |
| inspections | 0.016 | 0.022 | 0.493 |
| fees | 0.147 | 0.074 | 0.070 |
| main_occupation | 1.000 | 0.545 | 0.086 |
| hobby | -0.782 | 0.352 | 0.042 |
| hours | 0.004 | 0.011 | 0.723 |
| f_employees | -0.028 | 0.061 | 0.656 |
| p_employees | 0.022 | 0.045 | 0.628 |
| importance | 0.071 | 0.114 | 0.545 |
| baked | 0.086 | 0.355 | 0.812 |
| confectionary | -0.182 | 0.470 | 0.704 |
| condiments | 0.613 | 0.508 | 0.247 |
| dry_goods | -0.138 | 0.643 | 0.833 |
| pastries | 0.606 | 0.602 | 0.332 |
| preserves | -0.918 | 1.013 | 0.381 |
| snacks | 0.226 | 1.023 | 0.828 |
| sell_refrigerated | 0.504 | 1.027 | 0.632 |
| farmers_markets | 0.109 | 0.347 | 0.761 |
| roadside_stands | 0.315 | 0.620 | 0.620 |
| community_events | -0.116 | 0.427 | 0.789 |
| home | 0.200 | 0.337 | 0.563 |
| restaurants | -0.037 | 0.481 | 0.940 |
| retail_stores | 0.586 | 0.403 | 0.184 |
| online_phone | 0.315 | 0.482 | 0.525 |
| personal_income | 0.006 | 0.002 | 0.002 |
| race | 0.041 | 0.498 | 0.935 |
| married | 0.433 | 0.361 | 0.252 |
| education | -0.001 | 0.133 | 0.993 |
| children | 0.047 | 0.298 | 0.877 |
| rural | 0.146 | 0.386 | 0.711 |
| urban | -0.146 | 0.586 | 0.808 |
| gender | 0.228 | 0.471 | 0.635 |
| arizona | -1.056 | 0.389 | 0.016 |
| intercept | 4.820 | 1.266 | 0.002 |

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Table C2: Model 2

| | Coefficient | Robust Clustered S.E. | ρ |
|-------------------|-------------|-----------------------|--------|
| sales_cap | 0.000 | 0.000 | 0.908 |
| refrigerated | 28.428 | 18.727 | 0.168 |
| venues | 1.829 | 4.265 | 0.677 |
| training | 8.331 | 13.357 | 0.543 |
| approval | -1.610 | 1.663 | 0.355 |
| prohibited_foods | 0.004 | 9.112 | 1.000 |
| prohibited_venues | 13.924 | 16.223 | 0.410 |
| inspections | -0.442 | 0.894 | 0.634 |
| fees | 5.233 | 3.235 | 0.131 |
| main_occupation | 11.372 | 19.598 | 0.572 |
| hobby | -10.822 | 15.027 | 0.483 |
| hours | -0.597 | 0.389 | 0.153 |
| f_employees | -1.125 | 2.394 | 0.651 |
| p_employees | 0.793 | 1.993 | 0.697 |
| annual_sales | 8.160 | 2.259 | 0.005 |
| importance | -17.680 | 4.413 | 0.003 |
| baked | 23.066 | 14.186 | 0.130 |
| confectionary | -15.042 | 21.052 | 0.490 |
| condiments | 27.768 | 18.219 | 0.160 |
| dry_goods | 5.723 | 21.992 | 0.799 |
| pastries | -15.036 | 25.049 | 0.559 |
| preserves | 11.650 | 35.044 | 0.747 |
| snacks | -17.078 | 33.570 | 0.618 |
| sell_refrigerated | -15.768 | 36.726 | 0.680 |
| farmers_markets | -7.505 | 14.995 | 0.625 |
| roadside_stands | 14.981 | 23.115 | 0.532 |
| community_events | 16.213 | 14.867 | 0.293 |
| home | 9.421 | 12.370 | 0.462 |
| restaurants | 11.775 | 20.160 | 0.567 |
| retail_stores | -1.476 | 17.533 | 0.935 |
| online_phone | 10.383 | 20.406 | 0.621 |
| race | -0.159 | 17.521 | 0.993 |
| married | 27.652 | 13.087 | 0.060 |
| education | 20.715 | 4.899 | 0.002 |
| children | 11.302 | 12.874 | 0.399 |
| rural | 16.131 | 16.480 | 0.358 |
| urban | 7.616 | 24.874 | 0.766 |
| gender | -1.909 | 19.011 | 0.921 |
| arizona | 20.976 | 21.578 | 0.373 |
| intercept | 41.983 | 50.236 | 0.426 |

Table C3: Model 3

| | Coefficient | Robust Clustered S.E. | ρ |
|------------------------|-------------|-----------------------|--------|
| sales_cap | 0.000 | 0.000 | 0.702 |
| refrigerated | -0.235 | 0.349 | 0.501 |
| venues | 0.037 | 0.061 | 0.542 |
| training | 0.139 | 0.429 | 0.745 |
| approval | 0.012 | 0.029 | 0.683 |
| prohibited_foods | 1.300 | 0.294 | 0.000 |
| prohibited_foods*rural | -1.123 | 0.396 | 0.005 |
| prohibited_venues | 0.509 | 0.307 | 0.097 |
| inspections | -0.031 | 0.020 | 0.121 |
| fees | 0.023 | 0.049 | 0.636 |
| main_occupation | 0.073 | 0.385 | 0.850 |
| hobby | 0.678 | 0.225 | 0.003 |
| hours | 0.006 | 0.009 | 0.492 |
| f_employees | 0.066 | 0.041 | 0.105 |
| p_employees | 0.012 | 0.030 | 0.697 |
| annual_sales | -0.067 | 0.045 | 0.134 |
| capital | 0.128 | 0.060 | 0.033 |
| continue_selling | 0.036 | 0.008 | 0.000 |
| importance | 0.249 | 0.099 | 0.012 |
| baked | -0.169 | 0.369 | 0.648 |
| confectionary | -0.421 | 0.365 | 0.249 |
| condiments | 0.572 | 0.364 | 0.116 |
| dry_goods | 0.206 | 0.565 | 0.716 |
| pastries | -0.821 | 0.372 | 0.027 |
| preserves | 1.696 | 0.889 | 0.056 |
| snacks | 0.101 | 0.707 | 0.887 |
| sell_refrigerated | 1.618 | 0.678 | 0.017 |
| farmers_markets | 0.093 | 0.230 | 0.686 |
| roadside_stands | 0.855 | 0.514 | 0.096 |
| community_events | -0.123 | 0.217 | 0.570 |
| home | -0.157 | 0.270 | 0.562 |
| restaurants | 0.252 | 0.392 | 0.521 |
| retail_stores | 0.637 | 0.298 | 0.032 |
| online_phone | 0.582 | 0.448 | 0.194 |
| personal_income | -0.001 | 0.002 | 0.587 |
| household_income | 0.000 | 0.001 | 0.860 |
| race | -1.324 | 0.314 | 0.000 |
| married | 0.109 | 0.364 | 0.765 |
| education | 0.266 | 0.078 | 0.001 |
| children | 0.682 | 0.209 | 0.001 |
| rural | -0.109 | 0.329 | 0.740 |
| urban | 0.874 | 0.515 | 0.090 |
| gender | -0.814 | 0.418 | 0.051 |
| arizona | 0.348 | 0.468 | 0.457 |
| intercept | -2.088 | 1.070 | 0.051 |

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APPENDIX D: DESCRIPTIVE STATISTICS

The following tables provide descriptive statistics for the sample that were not otherwise presented in the main text of the report.

| Race/Ethnicity | |
|------------------------------------|-------|
| White | 83.8% |
| Hispanic, Mexican, Latino, Spanish | 3.1% |
| African-American | 6.4% |
| Asian | 1.6% |
| Other | 2.6% |
| Refused | 2.5% |

| Highest Level of Education | |
|---------------------------------|-------|
| Less than high school graduate | 3.8% |
| High school graduate | 16.9% |
| Some college/associate's degree | 37.1% |
| Bachelor's degree | 25.7% |
| Post-graduate | 15.7% |
| Don't know/Refused | 0.8% |

| Marital Status | |
|-----------------------|-------|
| Single, never married | 13.0% |
| Married | 71.4% |
| Separated | 0.9% |
| Divorced | 8.5% |
| Widowed | 4.7% |
| Don't know/Refused | 1.4% |

| Children in Household Under Age of 18 | |
|---------------------------------------|-------|
| Yes | 34.8% |
| No | 54.5% |
| Don't know/Refused | 10.8% |

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| Recognized Disability | |
|------------------------------|-------|
| Yes | 8.8% |
| No | 89.2% |
| Don't know/Refused | 2.0% |

| Provide Care for Disabled, Sick, Elderly or Otherwise Incapacitated Person | |
|---|-------|
| Yes | 11.0% |
| No | 87.9% |
| Don't know/Refused | 1.1% |

| Respondent/Spouse Currently Serving in the Military | |
|--|-------|
| Yes | 0.6% |
| No | 98.4% |
| Don't know/Refused | 0.9% |

| Age of Respondents | |
|---------------------------|-------|
| 18-24 | 1.2% |
| 25-34 | 11.4% |
| 35-44 | 17.1% |
| 45-54 | 23.6% |
| 55-64 | 25.3% |
| 65-74 | 13.4% |
| 75+ | 4.0% |
| Refused | 3.9% |

ENDNOTES

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- 1 See Transcript of Proceedings at 30. *Kivirist v. Wyo. Dep't. of Agric.*, No. 16-CV-06 Lafayette Ctx. Cir. Ct. May 31, 2017); Final Order and Judgment. *Kivirist*, No. 16-CV-06 (Sept. 29, 2017); <http://ij.org/case/wisconsin-baked-good-ban/>
- 2 High-acid canned goods are those with a pH of 4.6 or below. Cornell Food Venture Center. n.d. *Acid and acidified foods*. <https://cfvc.foodscience.cals.cornell.edu/acid-and-acidified-foods>; 21 C.F.R. 114.3 a (2017).
- 3 See <http://ij.org/case/wisconsin-baked-good-ban/>
- 4 Expert Report of Thomas J. Montville at 2. *Kivirist*, No. 16-CV-06, (Sept. 30, 2016).
- 5 See <http://ij.org/case/wisconsin-baked-good-ban/>
- 6 See <http://ij.org/case/new-jersey-cottage-foods>
- 7 For example, according to the U.S. Census Bureau's 2012 Survey of Business Owners, over half of all U.S. businesses operate primarily out of the home. However, none of the available data disaggregate the various types of home-based businesses with sufficient detail to shed light on the cottage food industry. U.S. Census Bureau. (2012). *Statistics for all U.S. firms that were home-based by industry, gender, ethnicity, race, and veteran status for the U.S.: 2012 Survey of Business Owners*. <https://factfinder.census.gov/bkmk/table/1.0/cn/SBO/2012/00CSCB19>
- 8 For example, Texas and California legalized cottage foods in 2011 and 2013, respectively, while Florida, Colorado and Minnesota recently eased their restrictions on cottage food businesses. Sibilla, N. (2014b, September 22). Texans created over a thousand local businesses after Texas eased restrictions on selling food made at home. *Forbes*. <https://www.forbes.com/sites/instituteforjustice/2014/09/22/texans-created-over-a-thousand-local-businesses-after-texas-eased-restrictions-on-selling-food-made-at-home/#4e8a2c7c6406>; 2012 Cal. Legis. Serv. Ch. 415 (A.B. 1616) (West). https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1616; 2012 Fla. Sess. Law Serv. Ch. 2011-205 (C.S.H.B. 7209) (West), <http://www.flsenate.gov/Session/Bill/2017/01136>; Laxen, J. 2017, August 19). Homemade food vendors take advantage of relaxed Colorado laws. *Coloradoan*. <http://www.coloradoan.com/story/life/food/2017/08/19/cottage-food-act-colorado-food-vendors-take-advantage-relaxed-laws/559088001/>; Institute for Justice. 2015, June 16). Case closed: Minnesotans win right to sell homemade goods: agree to dismiss lawsuit [Press release]. <http://ij.org/press-release/case-closed-minnesotans-win-right-to-sell-homemade-goods-agree-to-dismiss-lawsuit/>
- 9 2017 North Dakota Laws Ch. 191 H.B. 1433. <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>; Farm-to-Consumer Legal Defense Fund. 2017, March 28, Wyoming expands Food Freedom Act. <https://www.farmtoconsumer.org/blog/2017/03/28/wyoming-expands-food-freedom-act/>; Wyoming Food Freedom Act, 2015 Wyo. Laws Ch. 121 H.B. 56, <http://legisweb.state.wy.us/2015/bills/HB0056.pdf>
- 10 Sibilla, 2014b; Sibilla, N. 2014a, January 29. California legalized selling food made at home and created over a thousand local businesses. *Forbes*. <http://www.forbes.com/sites/instituteforjustice/2014/01/29/california-legalized-selling-food-made-at-home-and-created-over-a-thousand-local-businesses/#5ceb514830a1>; Sibilla, N. (2017, February 16). Over 3,000 bakers are now in business after Minnesota eased restrictions on selling homemade food. Arlington, VA: Institute for Justice. <http://ij.org/minnesota-eased-restrictions-selling-homemade-food-3000-bakers-now-business/>
- 11 Burger, K. (2017, July 22). From their kitchen to yours: Minnesota cottage food producers cook for cash. *StarTribune*. <http://www.startribune.com/from-their-kitchen-to-yours-minnesota-cottage-food-producers-cook-for-cash/435707683/>
- 12 See <http://forrager.com/laws> and Appendix A. While Forrager's interpretation of cottage food laws for the states in the sample was confirmed by independent research, this analysis does not capture all of the intricacies of these states' food laws.
- 13 <http://forrager.com/law/south-dakota-home-sales/>
- 14 <http://forrager.com/law/south-dakota>
- 15 <http://forrager.com/law/iowa>; <http://forrager.com/law/iowa-home-food-establishment/>. The home food establishment license also allows producers to sell at any venue.
- 16 <http://forrager.com/law/ohio-home-bakery/>; <http://forrager.com/law/oregon-domestic-kitchen/>; <http://forrager.com/law/virginia-home-food-processing-operation/>
- 17 2017 North Dakota Laws Ch. 191 H.B. 1433). <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>; Farm-to-Consumer Legal Defense Fund, 2017; Wyoming Food Freedom Act, 2015 Wyo. Laws Ch. 121 H.B. 56). <http://legisweb.state.wy.us/2015/bills/HB0056.pdf>
- 18 <http://forrager.com/law/kentucky/>
- 19 <http://forrager.com/law/rhode-island/>
- 20 <http://forrager.com/law/ohio/>
- 21 Md. Code Health-Gen. § 21-301 b)(2); Neb. Rev. Stat. § 81-2,245.01 6); 410 Il. Comp. Stat. 625/4 b 2. However, in Illinois, if the main ingredient in a cottage food is locally grown, that food may also be sold on the farm where the ingredient was grown or delivered directly to the consumer.
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- 23 <http://forrager.com/law/hawaii/>

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Bayly, J. (2017, June 20). LePage signs food sovereignty law, the first of its kind in the nation. *BDN Maine*. <http://bangordailynews.com/2017/06/20/homestead/lepage-signs-food-sovereignty-law-the-first-of-its-kind-in-the-nation/>

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27 Cornfield, J. (2016, March 20). Effort to legalize home-baked goods stuck on cutting board. *AP News*. <https://apnews.com/1f4b7654c1ba478ab52ff08ff0fca829/effort-legalize-home-baked-goods-stuck-cutting-board>

28 SB 435, 2013-2014 Leg., Reg. Sess. (Wis. 2013), <https://docs.legis.wisconsin.gov/2013/related/proposals/sb435.pdf>; SB 330, 2015-2016 Leg., Reg. Sess. (Wis. 2015), <https://docs.legis.wisconsin.gov/2015/related/proposals/sb330.pdf>; SB 271, 2017-2018 Leg., Reg. Sess. (Wis. 2017), <https://docs.legis.wisconsin.gov/2017/related/proposals/sb271.pdf>

29 CBS Sunday Morning. (2017, May 31). In Wisconsin, selling cookies can land you in jail. <http://www.cbsnews.com/news/in-wisconsin-selling-cookies-can-land-you-in-jail/>

30 State Representative Robin J. Vos Speaker of the Wisconsin State Assembly. (n.d., a). *Biography*. <http://legis.wisconsin.gov/assembly/63/vos/about-robin/biography>

31 State Representative Robin J. Vos Speaker of the Wisconsin State Assembly (n.d., b). *Legislative awards and honors*. <http://legis.wisconsin.gov/assembly/63/vos/about-robin/legislative-awards-honors/>; Wisconsin Grocers Association. (n.d.) *Legislative report card: 2015-2016 legislative session*. <https://irp-cdn.multiscreensite.com/cd76a624/files/uploaded/Legislative%20report%20card%202016.pdf>. In 2015, the speaker also participated in and won a legislative grocery bagging contest (a “bag-off”) hosted by the Wisconsin Grocers Association at the state Capitol. Wisconsin Assembly Republicans. (2015, March 27). Speaker Robin Vos wins legislative bag-off [Video file]. <https://www.youtube.com/watch?v=53dxRRkRIbE>

32 CBS Sunday Morning. 2017; Shah, P. (2016, January 13). Farmers sue state over ban on selling homemade baked goods. *Wisconsin Public Radio*. <https://www.wpr.org/farmers-sue-state-over-ban-selling-homemade-baked-goods>

33 See Transcript of Proceedings at 12-13, *Kivistik v. Wis. Dep't. of Agric.*, No. 16-CV-06 (Lafayette Civ. Cir. Ct. May 31, 2017); <http://ij.org/case/wisconsin-baked-good-ban/>

34 Transcript of Proceedings at 13, *Kivistik*, No. 16-CV-06 (Lafayette Civ. Cir. Ct. May 31, 2017).

35 Institute for Justice. (2017, June 1). Victory for Wisconsin home bakers: Judge strikes down ban on selling home-baked goods as unconstitutional [Press release]. <http://ij.org/press-release/victory-wisconsin-home-bakers/>

36 See Mellor, W., & Carpenter, D. M. (2016). *Bottlenecks: Gaining the government for power and private profit*. New York, NY: Encounter Books.

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39 See Table B5 in Appendix B for a description of how states’ legal environments were taken into account in the statistical analysis.

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42 U.S. Census Bureau. (2016, December 8). New Census data show differences between urban and rural populations [Press release]. <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html>

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46 Loscocco, K., & Smith-Hunter, A. (2004). Women home-based business owners: Insights from comparative analyses. *Women in Management Review*, 19(3), 164-173.

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- 47 See <http://ij.org/case/mncottagefoods/>
 $\rho=0.005$
- 49 Rowe, B. R., Haynes, G. W., & Stafford, K. (1999). The contribution of home-based business income to rural and urban economics. *Economic Development Quarterly*, 13(1), 66–77. <http://journals.sagepub.com/doi/pdf/10.1177/089124249901300109>
- 50 Adamy, J., & Overberg, P. (2017b, August 2). Struggling Americans once sought greener pastures—now they're stuck. *The Wall Street Journal*. <https://www.wsj.com/articles/struggling-americans-once-sought-greener-pastures-now-theyre-stuck-1501686801>
- 51 Long, H. (2017, September 12). U.S. middle-class incomes reached highest-ever level in 2016, Census Bureau says. *The Washington Post*. https://www.washingtonpost.com/business/economy/us-middle-class-incomes-reached-highest-ever-level-in-2016-census-bureau-says/2017/09/12/7226905e-97dc-11e7-b569-3360011663b4_story.html
- 52 Adamy and Overberg, 2017a.
- 53 $\rho=0.003$
- 54 $\rho=0.042$
- 55 $\rho=0.033$
- 56 $\rho=0.000$
- 57 $\rho=0.012$
- 58 $\rho=0.001$
- 59 $\rho=0.001$
- 60 $\rho=0.032$
- 61 Although at least a portion of cottage food producers want to sell meat products, even Wyoming and North Dakota, which have very permissive food freedom laws, prohibit the sale of many meat products in an effort to comply with restrictions imposed by the U.S. Department of Agriculture.
- 62 $\rho=0.017$
- 63 $\rho=0.005$
- 64 <http://forrager.com/law/iowa-home-food-establishment/>; <http://forrager.com/law/ohio-home-bakery/>; <http://forrager.com/law/oregon-domestic-kitchen/>; <http://forrager.com/law/virginia-home-food-processing-operation/>
- 65 Powers, M. (2017, May 3). North Dakota is now open for homemade food businesses. Arlington, VA: Institute for Justice. <http://ij.org/north-dakota-now-open-homemade-food-businesses/>; Linnekin, B. (2015, March 14). Tremendous victory for Wyoming's bipartisan Food Freedom Act. *Reason*. <http://reason.com/archives/2015/03/14/tremendous-victory-for-wyomings-bi-parti>
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- 71 <http://forrager.com/law/illinois-home-kitchen-operation/>
- 72 <http://forrager.com/law/indiana>
- 73 <http://forrager.com/law/kentucky>
- 74 <http://forrager.com/law/louisiana>
- 75 Bayly, 2017.
- 76 2012 Md. Laws Ch. 255 (S.B. 550), <http://mlis.state.md.us/2012rs/bills/sb/sb0550t.pdf>
- 77 Md. Code Health Gen. § 21-301 b (2).
- 78 2017 North Dakota Laws Ch. 191 (H.B. 1433), <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>
- 79 <http://forrager.com/law/ohio>
- 80 <http://forrager.com/law/oklahoma-honey/>
- 81 <http://forrager.com/law/oregon-farm-direct/>
- 82 <http://forrager.com/law/rhode-island>
- 83 <http://forrager.com/law/vermont>
- 84 <http://forrager.com/law/virginia>

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JENNIFER McDONALD

Jennifer McDonald is a research analyst at the Institute for Justice, where she conducts original social science research as part of the strategic research team. Her research is featured in *License to Work: A National Study of Burdens from Occupational Licensing* (2nd ed.), *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd ed.), and *Forfeiture Transparency and Accountability: State-by-State and Federal Report Cards*. Prior to joining IJ, McDonald worked in California politics. She holds a Master of Public Administration, with emphases on management and economic policy, from the London School of Economics and Political Science and a bachelor's degree in history with a political science minor from California State University San Marcos.

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ABOUT IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, educational choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government. The Institute's strategic research program produces social science and policy research to inform public policy debates on issues central to IJ's mission.



Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

www.ij.org
p 703.682.9320
f 703.682.9321

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My name is Abby Clyde, I am a single mom and I live in Western ND. I have a disabled 6 year old daughter whom I care for as well as a 7 year old son. The Cottage Laws today have made it possible for me to generate enough income to help my daughter have a better life and given me the flexibility to be home with her. My parents raised me in Medora working in their restaurant the Cowboy Cafe and teaching me safe food handling and kitchen cleanliness. I take great care in the process of making food and canning shelf stable items. One of my top selling items that covers 25 percent of my new income is the shelf stable beverages I can and preserve such as: Strawberry Rhubarb Concentrate Lemonade, Juneberry Lemonade Concentrate, Wild ND grape juice, wild ND Juneberry juice, wild ND Buffalo Berry juice, and wild ND Plum Juice. I personally have never found these juices on the shelf anywhere else made from wild North Dakota Fruits. I feel that the loss of beverages on the bill would be a tremendous loss for North Dakota, not only is the public unable to obtain these items elsewhere but I have sold over 400 pints or quarts of juice in the last year (all of which have my name and phone number on the label) and I have had ZERO reports of spoilage or sickness because of these juices. I have also served the grapejuice to my daycare children weekly for the last several years and have never had a bad jar of juice or a sick child because of this. In my opinion from canning and preserving food ...the process used to can these juices is by far safer than many of the approved canned items since the process is way more minimal than salsa or pickled beets for example. I also have taken the time to call the majority of our State Health Units to inquire about food sickness cases being linked to foods sold under the cottage food laws and am happy to report ZERO cases. Please consider this information when making your decision and do not pass this bill, this bill is unnecessary and a waste of taxpayers money...why fix a problem when there isn't a problem to begin with?

Thank you for taking the time to read this, I hope this is received by you before the meeting this morning.

Take care and Godbless,
Abby Clyde

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Good Morning

My name is Bonnie Munsch. I am a farmer's market vendor and I have several questions about this SB2269.

Sec 1-b. Why were the words designed and intended for use by the residents of a private home removed. What is the definition of non-commercial?

Sec 1-16. Does the word yeast mean no yeast in the recipe. which would eliminate a lot of baked goods?

Sec 2-6. Would this mean I could not sell another vendor who bakes any of my spices, garlic, chili, onion powder for them to use in their baked goods?

In Section 3-3a and Sec 4-d3. This bill has specified that the eggs must be wash, why was this wording added?

Sec 4-3b. What is meant by day of production? Do I need to put on when it was harvested, when I dried it or the day it was put in the container?

Sec 4-d. The word previously would indicate that I would not have to keep it frozen in transit.

Thank-you for your time.

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TESTIMONY ON SB 2269

Carel Two-Eagle

March 22, 2019 3/22/19

Hanh Chairman Johnson and members of the House Agriculture Committee. For the record, my name is Carel Two-Eagle and I am in opposition to SB 2269 unless it is amended as Leann Harner offered.

In it's initial hearing, I spoke in favor in it, but I made an error & only skimmed it before I wrote my testimony, so I did not catch several significant points. So, while the prime sponsor has tried to make things better for the cottage foods movement in bringing a bill, this bill does not do the job, for the following reasons:

It appears no one read the original law before putting SB2269 together. If they had, I don't think we'd be here today.

In the original law (HB 1433), passed in the 2017 Legislative Session, it says on Page 1:

Direct producer to consumer sales of cottage food products.

1..Notwithstanding any other provision of law, a state agency or political subdivision may not require licensure, permitting, certification, inspection, packaging, or labeling that pertains to the preparation or sale of cottage food products under this section.

And further on, on Page 2, it says,

5..The cottage food operator shall inform the end consumer that any cottage food product or food sold under this section is not certified, labeled, licensed, packaged, regulated, or inspected. HB 1433 that was passed in 2017's legislative Session, specifically says that cottage foods shall not be regulated and that the producer shall inform the consumer as given in "5" above.

Thus, as I read SB 2269, which definitely regulates cottage foods and their production – as if they were industrially produced, rather than cottage foods - it directly contradicts 2017's HB 1433, which is already in law. HB 1433, the existing law of North Dakota, says the Health Department CANNOT regulate cottage foods. This is why the Health Department did not make any rules regarding cottage foods after HB 1433 became law in 2017 – it could not.

Additionally, SB 2269, which was apparently written entirely by the Health Department, deeply offends every good cook in North Dakota, of which there are thousands. We've been getting along just fine without pH meters, hygrometers, or any other industrial food-production equipment our entire lives. My background is in chemistry, so I know how to use such equipment, but I definitely do not use it when I cook, and people have come back for 2nd & 3rd helpings of my food.. and no one has ever gotten sick from my cooking. I'm hardly alone in this.

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The regulations and requirements proposed by the Health Department stop a hair's breadth short of saying that all the good cooks of North Dakota, who have been successfully feeding people without oversight by the omnipotent and flawless cooks of the Health Department, have actually been poisoning people by the thousands at bazaars, weddings, funerals, and farmer's markets across the state – for as long as North Dakota has existed. IF that were true, why have we not heard about it? Certainly the hospitals and walk-in clinics would have been swamped with people suffering food poisoning if that were so. It definitely would have been in every newspaper and on radio and TV – and there have been no such reports. Since there have not been incidents of food poisoning by cottage food producers here, who produce the very same foods they feed their families, friends, guests, and give as gifts, SB 2269 has no reason to exist.

I note that "Food Safety magazine" (<https://www.foodsafetymagazine.com/enewsletter/a-look-back-at-2016-food-recalls/>) article of February 7, 2017, notes the number and kind of "industrial" food recalls from 2016 – 764 - none of which came from North Dakota producers, either "industrial" or "cottage" producers. Yet cottage food producers use these same "industrial" foods in their products with no difficulty whatsoever.

A similar article in 2018, Food Safety magazine says "A total of 456 food recalls in the U.S. were recorded for 2017." It goes on to state, "...218 food products posed health risks to unknowing consumers because allergenic ingredients were not properly displayed on product labels. The most prominent undeclared food allergens in 2017 were:

- Milk – 110 incidents Egg – 35 incidents Soy – 28 incidents
- Almond – 19 incidents Peanut – 18 incidents"

This is approximately half the number for the previous year.

IF any aspect of cottage food production should have an additional labeling requirement, it should be regarding allergens – but nothing further.

So – not only is SB2269 offensive and insulting to your many friends and relatives across North Dakota who are excellent cooks, it is in direct opposition to law already existing, which passed in the 2017 Session, so it is not needed.

Unless you amend SB 2269 as Leann Harner offered, please give SB 2269 a resounding DO NOT PASS recommendation and in the process, give the many good cooks of North Dakota a vote of confidence and a 'thank you' for the terrific job we've been doing for dona-hey years, and will continue to.

Thank you for hearing me in a good way now. I am always available to answer any questions.

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19.0887.04002

FIRST ENGROSSMENT

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE **BILL NO. 2269**

Introduced by

Senators Klein, Myrdal, Unruh

Representatives D. Johnson, Schreiber-Beck

1 A BILL for an Act to create and enact three new sections to chapter 23-09.5 of the North Dakota
2 Century Code, relating to cottage food production and sale; and to amend and reenact sections
3 23-09.5-01 and 23-09.5-02 of the North Dakota Century Code, relating to the direct producer to
4 consumer sale of cottage food products.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 23-09.5-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-09.5-01. Definitions.**

9 As used in this chapter:

- 10 1. "Adulterated" has the same definition as under section 19-02.1-09.
- 11 2. "Baked goods" means a food usually produced from dough or batter which is baked
12 before consuming, including bread, quick bread, lefse, fruit pies, custard pies, cakes,
13 cheesecakes, cookies, biscuits, crackers, doughnuts, rolls, pastries with or without
14 fillings, candies, or chocolates, or similar products, regardless of whether the food
15 requires time and temperature control for safety.
- 16 3. "Commercial consumption" includes use of food in a food establishment, food
17 processing plant, retail food store, or any other food operation requiring licensure
18 under section 23-09-16.
- 19 4. "Cottage food operator" means an individual who produces or packages cottage food
20 products in a noncommercial kitchen ~~designed and intended for use by the residents~~
21 ~~of a private home.~~
- 22 2.5. "Cottage food product" means baked goods, jams, jellies, and pickles, or other food
23 ~~and drink products produced or packaged by a cottage food operator. The term does~~
24 not include whole, uncut fresh fruits and vegetables.

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- 1 ~~3-6.~~ "Delivery" means the transfer of a cottage food product resulting from a
- 2 person-to-person transaction between a cottage food operator and an informed end
- 3 consumer.
- 4 ~~4-7.~~ "Farmers market" means a market or group of booths whereat which farmers and
- 5 other cottage food operators sell cottage food products directly to consumers.
- 6 ~~5.~~ "~~Home consumption~~" means ~~food consumed within a private home or food from a~~
- 7 ~~private home consumed only by family members, employees, or nonpaying guests.~~
- 8 ~~6-8.~~ "Food" means an article used for food or drink for human consumption, including an
- 9 article used for a component of food or drink for human consumption.
- 10 ~~9.~~ "Food establishment" has the same definition as under section 23-09-01.
- 11 ~~9-10.~~ "Food requiring time and temperature control for safety" means perishable food that is
- 12 not modified in a way to limit the growth of undesirable micro-organisms or toxin
- 13 formation.
- 14 ~~10-11.~~ "Frozen" means a food is maintained at a temperture no greater than zero degrees
- 15 Fahrenheit [-17.8 degrees Celsius] or in a solid state.
- 16 ~~11-12.~~ "High acid foods" or "acidified foods" means foods naturally high in acid or foods that
- 17 have been acidified by adding acid or by the action of a culture to reduce the
- 18 equilibrium pH to four and six-tenths or below.
- 19 ~~12-13.~~ "Informed end consumer" means an individual who ~~is the last individual to purchase a~~
- 20 ~~cottage food product and has been informed the cottage food product is not licensed,~~
- 21 regulated, or inspected purchases a cottage food product for noncommercial
- 22 consumption and has been informed the cottage food product is produced and
- 23 packaged in a noncommercial kitchen and the product is not regulated or inspected by
- 24 a state or local health department.
- 25 ~~13-14.~~ "Misbranded" means any false or misleading labeling of a food product; food offered
- 26 for sale under the name of another food; or a food container made, formed, or filled as
- 27 to be misleading.
- 28 ~~14-15.~~ "Safe moisture level" means a level of moisture low enough to prevent the growth of
- 29 undesirable micro-organisms in the finished food product. The measurement of
- 30 moisture level or water activity at eighty-five hundredths or less is low enough to inhibit
- 31 the growth of undesirable micro-organisms.

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1 ~~7.15.16~~ "Transaction" means the exchange of buying and selling directly, person-to-person,
2 between the cottage food operator and informed end consumer.

3 ~~16.17.~~ "Undesirable micro-organisms" means yeasts, molds, bacteria, viruses, protozoa, and
4 parasites, and includes disease-causing pathogens having public health significance
5 which subject food to decomposition, indicate food is contaminated with filth, or
6 otherwise may cause food to be adulterated.

7 ~~18.~~ "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or
8 natural state, including all fruits and vegetables that are washed, colored, or otherwise
9 treated in an unpeeled natural form before marketing.

10 **SECTION 2. AMENDMENT.** Section 23-09.5-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **23-09.5-02. Direct producer to consumer sales of cottage food products.**

- 13 1. Notwithstanding ~~any other provision of law,~~ a contrary provision of law regarding the
14 production, packaging, sale, or purchase of a food item, under the terms of this
15 chapter, a cottage food operator may produce, package, and sell a cottage food
16 product to an informed end consumer. A state agency or political subdivision may not
17 require licensure, regulation, permitting, certification, or inspection, packaging, or
18 labeling that pertains to the preparation, packaging, or sale of cottage food products
19 authorized for sale and purchase under this section. This section does not preclude
20 ana state agency or political subdivision from providing assistance, consultation, or
21 inspection, upon the request, of a ~~producer~~cottage food operator.
- 22 2. ~~Transactions~~A transaction of a cottage food product under this sectionchapter must be
23 directly between the cottage food operator and the informed end consumer and be
24 onlyintended for ~~home~~noncommercial consumption. ~~Transactions~~A transaction may
25 occur at a farm, ranch, farmers market, ~~farm~~roadside stand, ~~home~~-based kitchen, or
26 any other venue not otherwise prohibited by law or through ~~delivery~~private home, in-
27 person delivery, community event, craft show, county fair, or bazaar, or other similar
28 event.
- 29 3. ~~Transactions~~A transaction under this sectionchapter may not:
30 a. ~~Involve interstate commerce~~Occur outside the state; or
31 b. ~~Be conducted over the internet or phone,~~ through the mail; or by consignment;

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- 1 e. ~~Include the sale of uninspected products made from meat, except as provided~~
2 ~~under subdivision d; or~~
- 3 d. ~~Include the sale of uninspected products made from poultry, unless:~~
- 4 (1) ~~The cottage food operator slaughters no more than one thousand poultry~~
5 ~~raised by the cottage food operator during the calendar year;~~
- 6 (2) ~~The cottage food operator does not buy or sell poultry products, except~~
7 ~~products produced from poultry raised by the cottage food operator; and~~
- 8 (3) ~~The poultry product is not adulterated or misbranded.~~
- 9 4. ~~Except for whole, unprocessed fruits and vegetables, food prepared by a cottage food~~
10 ~~operator may not be sold or used in any food establishment, food processing plant, or~~
11 ~~food store.~~
- 12 5. ~~The cottage food operator shall inform the end consumer that any cottage food~~
13 ~~product or food sold under this section is not certified, labeled, licensed, packaged,~~
14 ~~regulated, or inspected.~~
- 15 6. ~~This section does not change any requirement for brand inspection or animal health~~
16 ~~inspections.~~
- 17 7. ~~A cottage food operator shall label all cottage food products that require refrigeration,~~
18 ~~such as baked goods containing cream, custard, meringue, cheesecake, pumpkin pie,~~
19 ~~and cream cheese, with safe handling instructions and a product disclosure statement~~
20 ~~indicating the product was transported and maintained frozen.~~
- 21 8. ~~A cottage food operator shall display a consumer advisory sign at the point of sale or~~
22 ~~place a label on the cottage food product with the following statement:~~
- 23 ~~"This product is made in a home kitchen that is not inspected by the state or local~~
24 ~~health department."~~
- 25 9. ~~The state department of health or a local regulating authority may conduct an~~
26 ~~investigation upon complaint of an illness or environmental health complaint.~~
27 food product may be advertised using the internet if the transaction and delivery are
28 made in person, directly from the cottage food operator to the informed end consumer,
29 as specified under this section.

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1 5. A cottage food operator may not sell a cottage food product to an informed end
2 consumer if the cottage food operator knows the cottage food product is intended to
3 be used for commercial consumption.

4 6. An informed end consumer may not sell a cottage food product or provide the cottage
5 food product to another person for commercial consumption.

6 7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food
7 operator may not be sold or used for commercial consumption.

8 **SECTION 3.** A new section to chapter 23-09.5 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Cottage food products.**

11 The following cottage food products are not authorized for sale under this chapter:

12 1. Meat, wild game, poultry, fish, seafood, or shellfish, or products containing such items.

13 A cottage food operator may sell uninspected raw poultry or shell eggs that are the
14 product of poultry, if:

15 a. The cottage food operator slaughters no more than one thousand poultry during
16 the calendar year;

17 b. The cottage food operator does not sell poultry or shell eggs produced from
18 poultry raised by anyone other than the cottage food operator; and

19 c. The raw poultry product is not adulterated or misbranded.

20 2. Home-processed or home-canned products, unless:

21 a. The products are processed or canned in this state and the products are high
22 acid foods, such as fruit, or acidified foods, such as salsa, pickles, or vegetables
23 and the pH level is verified by using a calibrated pH meter; or

24 b. The products are dehydrated, are freeze dried, or have a safe moisture level.

25 3. Food requiring time and temperature control for safety, unless the food is baked or
26 otherwise meets the requirements under this subsection. A food requiring time and
27 temperature control for safety which is a cottage food product authorized for sale
28 under this chapter;

29 a. If transported by the cottage food operator, must be maintained frozen by the
30 cottage food operator, except for washed shell eggs, which must be transported

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- 1 and maintained under refrigeration at forty-five degrees Fahrenheit [7.2 degrees
2 Celsius] or less; and
3 b. Must be labeled in accordance with the requirements of this chapter.
4 4. Dairy, unless properly pasteurized and then only to the extent the dairy is used as an
5 ingredient in a baked good.
6 5. Garlic in oil.
7 6. Seed sprouts of any variety.
8 7. Cut leafy greens, except for leafy greens grown and dehydrated or blanched and
9 frozen by the cottage food operator.
10 8. Fresh cut or cooked fruits and vegetables, unless the fresh cut fruits and vegetables
11 are grown by and are dehydrated by or blanched and frozen by the cottage food
12 operator and do not require time and temperature control for safety or are blanched
13 and frozen. Fresh cut fruits and vegetables do not include a cut fresh leafy green,
14 tomato, or melon, dehydrated tomato or melon, or blanched and frozen cut melon.
15 9.3. Wild-harvested, noncultivated mushrooms.
16 10.9. Alcoholic beverages.
17 11.10. Animal feed or pet feed, or any products not intended for human consumption.

18 **SECTION 4.** A new section to chapter 23-09.5 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Cottage food labeling.**

- 21 1. A cottage food operator may not sell an adulterated or misbranded cottage food
22 product.
23 2. A cottage food operator shall inform the end consumer the cottage food product is
24 produced and packaged in a noncommercial kitchen and the product is not regulated
25 or inspected by a state or local health department.
26 3. A cottage food operator shall label cottage food that requires time and temperature
27 control for safety with safe handling instructions and a product disclosure statement.
28 The safe handling instructions and product disclosure statement must:
29 a. Appear on the product packaging labeled prominently and conspicuously and in a
30 legible type size;

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INSTITUTE FOR JUSTICE

March 16, 2018

VIA EMAIL AND CERTIFIED MAIL

Mylynn K. Tufte
State Health Officer
North Dakota Department of Health
600 East Boulevard Avenue
Bismarck, ND 58505-0200

RE: Proposed Rules for the Food Freedom Act

Dear Ms. Tufte:

I am writing to you regarding the proposed rules for administering North Dakota’s Food Freedom Act, which were proposed on February 15. These proposed rules contradict the plain text of the Act and would thus be *ultra vires*. Accordingly, we strongly suggest that you withdraw the proposed rules from consideration.

I am a constitutional attorney at the Institute for Justice, a national nonprofit organization that fights against laws that irrationally burden people’s right to pursue their chosen livelihood. One of my areas of expertise is cottage food law. I was the attorney who successfully sued Minnesota (*Astramecki v. Department of Agriculture*) and Wisconsin (*Kivirist v. Department of Agriculture*) concerning their unconstitutionally restrictive cottage food laws, and I am currently litigating against New Jersey regarding its total ban on the sale of cottage foods. In addition, I litigate against state agencies that enact *ultra vires* rules. See, e.g., *Espinoza v. Mont. Dep’t. of Rev.*, No. DV-15-1152(D) (Mont. Dist. Ct. Mar. 31, 2016).

My colleague Jennifer McDonald and I were recently alerted to the Department’s proposed rules by residents within your state. Upon investigation, we have concluded that these rules would, if promulgated, substantially curtail the rights granted to homemade food producers under the Food Freedom Act. While the statute allows the sale of all homemade foods and drinks besides certain meat and poultry products, the proposed rules would allow the sale of only a few, extremely restricted foods.

The statutory language of the Food Freedom Act is clear. Section 23-09.5-02(1) states that “a state agency or political subdivision may not” regulate “the preparation or sale of cottage food products.” “Cottage food product,” in turn, is defined as a “food and drink product[] produced by a cottage food operator,” and “cottage food operator” is defined as a person who makes food in a private home kitchen. § 23-09.5-01(1) & (2). The only homemade foods that the Act does not permit the sale of are certain “uninspected products made from meat” and certain “uninspected products made from poultry” (unless the poultry producer meets certain

ARLINGTON AUSTIN CHICAGO MIAMI MINNEAPOLIS SEATTLE TEMPE

1

requirements). § 23-09.5-02(3). The Act thus covers all homemade “food and drink” that is not meat or poultry.

In contrast, the proposed rules would severely limit the homemade foods allowed to be sold to baked goods, certain home-canned goods, dry goods, and a few other limited items. The rules would also severely restrict the sale of even these items. For instance, the rules would require that home-baked goods that need refrigeration be frozen when sold. Not only would this prohibit the sale of many “fresh” baked goods, but it would also prevent the sale of baked goods to customers who want to eat them shortly after purchase. The rules would also require that home-canned goods have a pH level of 4.6 or lower, preventing many fruits and vegetables from being canned and sold by a home producer.

Rules that contradict the language of a statute are ultra vires and invalid. *See, e.g., Shiek v. North Dakota Workers Compensation Bureau*, 1998 ND 139, ¶16 (stating the courts “will defer to a reasonable interpretation of a statute by the agency enforcing it However, an interpretation that does contradict clear and unambiguous statutory language cannot be called reasonable.”); *see also Guthmiller v. Dir.*, 2018 ND 9, ¶8 (“We defer to the interpretation of a statute by the agency administering the law unless that interpretation contradicts clear statutory language.”).

Finally, it bears noting that North Dakota’s Food Freedom Act is an important piece of legislation that has the potential to create thousands of jobs across the state. According to new research by the Institute for Justice, cottage foods provide an attractive avenue to entrepreneurship, as they allow people to start businesses with little capital. Cottage food producers are overwhelmingly female, live in rural areas, and have below-average income. By hamstringing the Food Freedom Act, the Department would deprive such vulnerable people, and others like them, from realizing the economic opportunity that the Act was intended to provide. The Department’s rules would also severely limit consumers from making their own choices when it comes to where their food comes from.

Therefore, we strongly encourage you to withdraw these rules. Cottage food producers should be allowed to sell all foods not explicitly excluded by statute. Thank you, and please contact me if you have any questions. My number is (703) 682-9320.

Sincerely,



Erica Smith
Attorney
INSTITUTE FOR JUSTICE

North Dakota Department of Health
March 15, 2018
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cc:

Governor Doug Burgum (via email and certified mail)
Lieutenant Governor Brent Sanford (via email and certified mail)
Jennifer McDonald, Institute for Justice research analyst (via email)
Darleen Bartz, Chief of Health Resources Section: (via email)
Julie Wagendorf, Director of Food & Lodging (via email)
LeAnn Harner, North Dakota Food Freedom organization (via email)

#1
4/4/19 a.m.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

Page 1, line 1, replace "three" with "four"

Page 2, line 8, after "8." insert "Food" means an article used for food or drink for human consumption."

9."

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 5, line 14, remove "or"

Page 5, line 15, after "level" insert: "; or

c. The products are low-acid foods processed using a pressure canner"

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 25, remove "in a baked good"

Page 7, line 1, after "4." insert "If the cottage food is a low-acid food, the label required under this section must:

- a. Be printed on a high visibility color background;
- b. Include the phrase "low-acid food" in bold capital letters; and
- c. Contain the following language: "Improperly canned low-acid food carries a risk of botulism".

5."

Page 7, after line 4, insert:

"6. The state department of health shall publish a list of high-acid foods that do not require special labeling under this section as a low-acid food."

Page 7, after line 9, insert:

"SECTION 6. A new section to chapter 23-09.5 of the North Dakota Century Code is created and enacted as follows:

Food safety class.

#1
4/4/19 a.m.
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The state department of health shall offer a free online food safety course for cottage food operators. Upon satisfactory completion of this course, the department shall issue to the cottage food operator a certificate of completion."

Renumber accordingly

#1
4/4/19 a.m.
SB 2269

Amendments Still Needed to SB 2269 Version: 19.0887.04004

Page 1, line 23, remove ". The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 15, after "products" insert "are dehydrated, are freeze dried;

c. The products are blanched and frozen;

d." Note: This is where your "Page 5, line 15" amendment for low-acid food should be inserted.

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 26, delete "Garlic in oil".

Page 5, line 27, delete "6. Seed sprouts of any variety."

Page 5, lines 28-29, delete "7. Cut leafy greens, except for leafy greens grown and dehydrated or blanched and frozen by the cottage food operator."

Page 5, lines 30-31, delete "8. Fresh cut or cooked fruits and vegetables, unless the fresh cut fruits and vegetables are grown by and are dehydrated by or blanched and frozen by the cottage food"

Page 6, lines 1-3, delete "operator. Fresh cut fruits and vegetables do not include fresh tomato or melon dehydrated tomato or melon, or blanched and frozen cut melon.

9."

Page 6, lines 4 and 5 renumber

Page 6, line 24, after "Handled" insert "Refrigerated or"

#1
4/4/19
p.m.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

Page 7, line 19, after "food" insert "increases your risk of developing foodborne illnesses including botulism or death."

Page 7, after line 31, insert:

"SECTION 6. A new section to chapter 23-09.5 of the North Dakota Century Code is created and enacted as follows:

Insurance

A cottage food operator must carry liability insurance, and proof of insurance must be provided upon request.

Page 8, remove lines 1 through 6.

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4-16-19
#1 pg. 1/1

Cottage Food Industry Overview

50 Farmers Markets

588 Farmers Markets Vendors

75% of Vendors sell cottage foods

440 cottage food producers

\$3,500 Average annual sales X 440 Cottage food producers = \$1,540,000 Cottage food products per year

\$100,000 Estimated volume of Low Acid Foods

- Opportunity
- Extended Product Lines

Refrigerated Goods

- Opportunity for rural producers

60% of cottage food producer carry liability insurance

Wyoming cottage food industry grew by 220% in three years.

83% cottage food producers are women

Average cottage food producer annual income is \$36,000

Conclusions

Projected industry size by 2021 = \$2.5 Million

Projected Cottage Food Sales = \$1.8 Million

Impact of No Low Acid = \$117,000

Average annual sales of low acid = \$2,000

Number of producers selling Low acid foods = 50

Total low acid units sold = 16,666

Total people effected by removing Low Acid foods = ~150 (50 producers X average family size)

April 16, 2019

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4-17-19
1 pg 1/2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2269

That the House recede from its amendments as printed on pages 1367-1369 of the Senate Journal and pages 1537-1539 of the House Journal and that Engrossed Senate Bill No. 2269 be amended as follows:

Page 1, line 23, remove "The term does"

Page 1, line 24, remove "not include whole, uncut fresh fruits and vegetables"

Page 2, line 8, after "8." insert "Food" means an article used for food or drink for human consumption.

9."

Page 2, line 9, replace "9." with "10."

Page 2, line 12, replace "10." with "11."

Page 2, line 14, replace "11." with "12."

Page 2, line 17, replace "12." with "13."

Page 2, line 23, replace "13." with "14."

Page 2, line 26, replace "14." with "15."

Page 2, line 30, replace "15." with "16."

Page 3, line 1, replace "16." with "17."

Page 3, after line 4, insert:

"18. "Whole, uncut fresh fruits and vegetables" means a fruit or vegetable in its raw or natural state, including all fruits and vegetables that are washed, colored, or otherwise treated in an unpeeled natural form before marketing."

Page 3, line 25, remove the overstrike over "~~Involve interstate commerce~~"

Page 3, line 25, remove "Occur outside the state"

Page 4, after line 29, insert:

"7. Except for whole, uncut fresh fruits and vegetables, food prepared by a cottage food operator may not be sold or used for commercial consumption."

Page 5, line 9, remove "and"

Page 5, line 10, after "misbranded" insert: "; and

d. In the case of raw poultry or shell eggs transported by the cottage food operator, maintained frozen, except for shell eggs, which must be transported and maintained under refrigeration of forty-five degrees

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4-17-19

1 pg. 2/2

Fahrenheit [7.2 degrees Celsius] or less if washed, or at room temperature if unwashed"

Page 5, line 14, remove "or"

Page 5, line 15, after "products" insert "are dehydrated or are freeze dried and the products"

Page 5, line 15, after "level" insert: "; or

c. The products are fresh cut fruits and vegetables that are blanched and frozen"

Page 5, line 16, remove "baked or"

Page 5, line 17, after "otherwise" insert "authorized under this section or"

Page 5, line 17, replace "A food" with "Food"

Page 5, line 18, remove "which is a cottage food product authorized for sale"

Page 5, remove line 19

Page 5, line 20, replace "a. If" with "must be labeled in accordance with the requirements of this chapter and if"

Page 5, line 20, after "transported" insert "by the cottage food operator"

Page 5, line 20, replace "frozen" with "at a temperature of forty degrees Fahrenheit [4.4 degrees Celsius] or less"

Page 5, line 20, remove ", except for"

Page 5, remove lines 21 and 22

Page 5, line 23, replace "b. Must be labeled in accordance with the requirements of this chapter" with "or, if a period of four hours or more occurs between transportation by the cottage food operator and delivery, must be maintained frozen by the cottage food operator. Cottage food products authorized for sale under this subsection are:

a. Baked goods;

b. Seed sprouts of any variety; and

c. Fresh cut leafy greens, tomato, and melon"

Page 5, line 25, remove "in a baked good"

Page 5, line 27, remove "Seed sprouts of any variety."

Page 5, remove lines 28 through 31

Page 6, remove lines 1 and 2

Page 6, line 3, remove "9."

Page 6, line 4, replace "10." with "7."

Page 6, line 5, replace "11." with "8."

Page 6, line 24, after "Handled" insert "Refrigerated or"

Re-number accordingly